¶ The fyrst dia
logue in Englisshe / with
newe additions.

Here after folowe̅th the fyrste Dyaloge in Englysshe/ betwyxte a Doctour of Diuinite/and a Studēt in the lawes of Englāde of the groundes of the sayde Lawes/ & of conscyence/ newly corrected: & eft sones Enpryn̄ted with new additions

(✠)

☞ The Introduccion.

A Doctoure of diuinitie that was of greate acquayntaunce/ & familiaritie with a Student in the lawes of Englande sayde thus vnto hym/ I haue had great desyre of longe tyme to knowe where vpō the law of Englande is grounded/but bycause moche parte of the lawe of Englāde is written in the frenche tonge. Therfore I cannat throughe myne owne studye atteyne to the knowlege therof:for in that tonge

I am nothynge experte. And bycause I haue alwaye founde the a kaythfull frēde to me in all my busynes. Therfore I am bolde to come to the before any other to knowe thy mynde what be the very groū des of the lawe of Englande as thou thynkest. ¶ Student) that wolde aske a great leasure/ & it is also aboue my connynge to do it. Neuerthelesse that thou shalt nat thynke that I wolde wilfully refuse to fulfyll thy desire: I shall with good wyll do that in me is to satisfie thy mynde/ but I pray the that thou wylte fyrste shewe me somwhat of other lawes that pertayne moste to this matter: & that Doctoures treate of howe lawes haue begonne. And then I wyll gladly shewe the as me tynketh what be the groūdes of the lawe of Englād. ¶ Doctoure) I wyll with good wyl do as thou sayste: wherfore thou shalt vnderstāde that Doctours treate of foure lawes/ the whiche as me semeth pertayne moste to this mater. The fyrste is the law eternall. The secōde is the lawe of nature of reasonable creature / the whiche as I haue harde saye is called by them that be lerned in the lawe of Englāde the law of reason. The thyrde is the law of god. The

fourth is the lawe of man. And therfore I wyll fyrste treate of the law eternall.

☞ Of the lawe eternall.
The fyrste Chapitre.

DOctoure) lyke as there is in euery artificer a reason of suche thynges as are to be made by his crafte / so lyke wyse it behoueth that in euery gouernour there be a reason & afore syght in the gouernour of suche thynges as shalbe ordered & done by hym: to thē that he hath the gouernaūce of. And for as moche as almightye god is the creatour & maker of all creatures/to the which he is compared as a workemā to his workes. And is also the gouernour of all dedes and mouynges that be founde in any creature. Therfore as the reason of the wysdome of god in as moche as creatures be creat by hym hath the reason & foresight of all craftes & warkes that haue ben or shalbe / so the reason of the wysdome of god mouynge all thynges by hym made to a good ende / opteyneth the name & reason of a law/ & that is called the lawe eternal. And this law eternall is called the fyrste lawe / & it is well

called the fyrste/for it was before all other lawes. And all other lawes be deriued of it/wherupon sayn̄t Augustin sayth in his fyrste boke of fre arbytrement that in temporall lawes nothynge is rightwyse ne lawfull/but that the people haue deriued to them out of the lawe eternall. wherfore euery man hath right & tytle to haue that he hath rightwysely of the rightwyse Jugement of the fyrste reason/whiche is the lawe eternall. ¶ Student) but howe may this lawe eternall be knowen / for as the Apostle writtet in the. v. chapitre. of his fyrste Epistle to the Corynthies. Quę sūt dei nemo scit nisi spiritus dei. That is to say: no man knoweth what is in god/but the spirite of god/ wherfore it semeth that he openeth his mouth in to heuē that attempteth to know it. ¶ Doctour) this lawe eternall no man may knowe as it is in it selfe/ but onely blessed soules that se god face to face/ but almyghty god of his goodnes sheweth of it as moche to hȳ creatures as is necessary for them/for els god shulde bynde his creatures to a thyng impossible: whiche may in no wyse be thoughte in hym. Therfore it is to vnderstāde that thre maner of wayes almightye god

maketh this lawe eternall knowen to his creatures reasonable. Fyrste by the light of naturall reason. Seconde by heuēly reuelacion. Thyrdly by the ordre of a prince or of any other secōdarie gouernour that hath power to bynde his subgectes to a lawe. And whan the lawe eternall or the wyll of god is knowen to his creatures resonable by the lighte of natural vnderstandynge/ or by the light of naturall reason/then it is called the lawe of reason And when it is shewed by heuenly reuelacion in suche maner as hereafter shall appere/then it is called the lawe of god. And when it is shewed vnto hym by the ordre of a prynce/or of any other secundarye gouernoure that hathe power to set a lawe vpon his subgectes / then it is called the lawe of mā: though originallie it be made of god/for lawes made by man/that hath receyned therto power of god be made by god. Therfore the sayd thre lawes: that is to saye / the lawe of reason / the lawe of god/& the lawe of man the whiche haue seuerall names after the maner as they be shewed to man/ be called in god one lawe eternall. And this is the lawe of whome it is written. Prouerbiorū octauo/ where

it is sayd. ✠Per me reges regnant et legū conditores iusta decernūt: that is to saye by me kynges reygne/ & makers of lawes decerne the trouth. And this sufficeth for this tyme of the lawe eternall.

☞ Of the lawe of reason / the whiche by Doctours/ is called the law of nature of reasonable creature The. ii. Chapitre.

Doctoure) Fyrste it is to be vnderstāde/that the lawe of nature maye be considered in two maners/that is to say generally & specially/when it is cōsidered generally/then it is referred to al creatures/aswel resonable as vnresonable/for all vnresonable creatures lyue vnder a certayne reule to them gyuen by nature/ necessarie for them to the conseruacion of theyr beyng/ but of this lawe it is nat our intent to treate at this tyme. The lawe of nature specially considered: whiche is also called the lawe of reason pertaineth onely to creatures resonable that is mā / which is create to the ymage of god. And this lawe ought to be kept aswell amonge Jewes & gentels/as among cristen mē. And

this lawe is alway good & rightwyse stye-
ryng & enclynyng a man to good/& abhor
rynge euyll: & as to the orderynge of the
dedes of mã it is preferred before the law
of god. And it is writtē i the hert of euery
man techynge hym what is to be done &
what is to be fled. And bycause it is writ-
ten in the herte/therfore it may nat be put
away/ne it is neuer chaūgeable by no dy-
uersite of place ne tyme. And therfore a-
gaynste this lawe prescripciō/statute/nor
custome may nat preuayle / and if any be
brought in agaynst it they be no prescrip-
cions statutes nor customes/but thynges
voyd & agaynst iustice. And al other lawes
aswell the lawes of god as to the actes of
men as other be grounded therevpon.
¶ Student) syth the lawe of reason is
writtē in the herte of euery man/as thou
haste sayde before techynge hym what is
to be done & what is to be fled/& the which
thou sayste maye neuer be put out of the
herte/what neded it than to haue any o-
ther lawe brought in to ordre the actes &
dedes of the people. ¶ Doctoure) though
the lawe of reason maye nat be chaunged
nor hollye put away: neuertheles before
the lawe writtē it was greatly lette and

blynded by euyll customes & by many synnes of the people beside the originall synne/in so moche that it myghte hardly be discerned what was rightwyse & what was vnrightwyse/& what good & what euyll/ wherfore it was necessarye for the good ordre of the people to haue many thynges added to the law of reason aswel by the Churche: as by seculer prynces accordynge to the maners of the countre & of the people/where suche additions shuld be exercysed. And this lawe of reason differeth fro the lawe of god in two maners/ for the lawe of god is gyuen by reuelacio of god/& this lawe is gyuen by a naturall light of vnderstandyng. And also the law of god ordereth a man of it selfe by a nighe way to the felicitie that euer shall endure. And the lawe of reason ordered a man to the felicitie of this lyfe. ¶ Student) but what be tho thynges that the lawe of reason techeth to be done/& what to be fled/I pray the shewe me. ¶ Doctoure) the law of reason techeth that good is to be loued & euyll is to be fled. Also that thou shalte do to another that thou woldest another shulde do to the. Also that we may do nothyng agaynste trouth. Also that a man

muste lyue peacefully with other. That iustice is to be done to euery man: & that wronge is nat to be done to any mā. And also that a trespasser is worthy to be punished & suche other/ of the whiche folow diuers other secundarie cōmaundemētes the whiche be as necessarie conclusions deriued of the fyrste/ as of that cōmaundement that good is to be beloued it folowth that a man shall loue his benefactour: for a benefactour in that he is a benefactour includeth in hym a reason of goodnes for els he ought nat to be called a benefactour/that is to say a good doer: but an euyll doer. And so in that he is a benefactour/he is to be beloued in all tymes /& in all places. And this lawe also sufferth many thinges to be dne/as that it is lawful to put away force with force. And that it is lawfull for euery mā to defende hym selfe & his goodes agaynst an vnlawfull power. And this lawe renneth with euery mānes lawe / & also with the lawe of god as to the dedes of man/& muste be always kept & obserued/ and shall alwaye declare what ought to folo vpon the generall rewles of the lawe of man/& shall restrayn the if they be in any thyuge contrary vnto it.

And here it is to be vnderstãde / that after some men/that lawe wherby all thynges were in cõmon was neuer of the lawe of reason/ but onely in the tyme of extreme necessitie. For they saye that the lawe of reason may nat be chaũged / but they say it is euident that the law wherby all thiges shulde be in cõmon is chaũged/wherfore they conclude that it was neuer the lawe of reason.

☞ Of the lawe of god. The.iii. Chapitre.

DOctoure) the lawe of god is a certayne lawe gyuen by reuelacion to reasonable creature shewynge hym the wyl of god/ wyllyng that creature reasonable to be bounde to do a thyng or nat to do it for optaynynge of the felicitie eternall. And it is sayde(for the optaynyng of the felicitie eternall)to exclude the lawes shewed by reuelacion of god for the politicall rewle of the people the whiche be called Judicials: for a lawe is nat properly called the law of god bycause it was shewed by reuelacion of god/but also because it directeth a mã by the nerest way to the

felicitie ternall as bē the lawes of the olde Testament that be called Mozals/ & the lawe of the Euāgelistes: the whiche were shewed in moche moze excellēt maner: thē the lawe of the olde Testament was: foz that was shewed by the mediacion of an Aungell. But the lawe of the Euāgelistes was shewed by the mediacion of our lozde Jesu Christe god an man/ & the lawe of god is alwaye rightwyse & iuste/ foz it is made & gyuen after the wyll of god. And therfoze all actes & dedes of man be called rightwyse & iuste when they be done accoz dynge to the lawe of god & be cōfozmable to it. Also somtyme a lawe made by man: is called the lawe of god. As when a lawe taketh his principall grounde vpon the lawe of god/ & is made foz the declaracion oz cōseruacion of the faythe/ & to put away heresyes/ as diuers lawes Cannōs & also diuers lawes made by the common people somtyme do. The whiche therfoze are rather to be called the law of god/ thē the lawe of man/ yet neuertheless all the lawes Cānō be nat the lawes of god. Foz many of them be made onely foz the politicall rewle & conuersation of the people wherupon Johñ Gerson in the treatyse

of the spirituell lyfe of the soule the secõde Lesson/ & the thyrde corrorally sayth thus. all the Cãnons of Popes nor theyr decres be nat the lawe of god. For many of them be made onely for the political cõuersacio of the people. And if any mã wyll saye be nat all the goods of the Churche spirituel For they belõge to the spiritualitie & leed to the spirituelte/we answere that in the hole politicall cõuersacion of the people/ there be some specially deputed & dedicate to the seruice of god/the whiche moste specially as by an excellẽcie are called spirituell mẽ as religious mẽ are. And other though they walke in the way of god/yet neuertheles because theyr office is moste specially to be occupyed aboute such thynges as pertayne to the cõmon welth/ & to the good ordre of the people/ they be therfore called seculer men or lay men / neuertheles the goods of the fyrst may no more be called spirituell / thẽ the goodes of the other for they be thynges mere temporall & kepyng the body as they do in the other And by lyke reason lawes made for the politicall ordre of the Churche be called many tyme spirituell/or the lawes of god Neuertheleste it is but vnproperly: & other

be called Ciuile or the law of man. And in this poynt many be ofttymes deceyued/ & also deceyue other/the whiche Juge tho thynges to be spirituell/the whiche al mẽ know be thiges materiall & carnal. These be the wordes of Johñ Gerson in the place alleged before. Furthermore besyde the lawe of reason & the lawe of mã it was necessarie to haue the lawe of god for foure reasons. The fyrste because man is ordeyned to the ende of eternal felicite the whiche exceedeth the proportion & facultie of mãnes power. Therfore it was necessarie that beside the law of reason & the lawe of man: he shulde be directed to his ende by a lawe made of god. Seconde for asmoche as for the incertein te of mãnes Jugemẽt specially of thynges pticuler & scldõ fallig It hapeneth oft tymes to folowe diuers Jugementes of diuers men/ & also diuersities of lawes/& therfore to the entent that a man without any doubte maye knowe what he shulde do/and what he shulde nat do. It was necessary that he shulde be directed in all his dedes by a lawe heuenly gyuen by god / the whiche is so apparante that no man maye swarue fro it as is the lawe of god. Thyrdly man

may oncly make a lawe of suche thynges as he may Juge vpon/& the Jugement of man may nat be of inwarde thynges/but oncly of outwarde thynges/& neuertheles it belongeth to perfeccion that a man be well ordered in bothe/that is to say/aswel inwarde as outwarde. Therfore it was necessary to haue the law of god/ the which shulde ordre a man aswell of inwarde thynges as of outwarde thynges. The fourth is bycause as saint Augustyn sayth in the fyrste boke of fre arbitrement/the lawe of man maye nat punysshe all offences: for if all offences shulde be punished/the cõmon welth shulde be hurte as it is of cõtractes for it can nat be auoyded/but that as lõge as contractes be suffered many offences shall folowe therby/& yet they be suffered for the cõmon welthe. And therfore that no cuyll shulde be vnpunysshed/ it was necessary to haue the law of god that shulde leue no cuyll vnpunished.

☞ Of the lawe of man .*.
The.iiii.Chapitre.

Doctour) The law of mã the whych somtyme is called the lawe positius

is deriuied by reason as a thynge whiche is necessarily & probably folowyng of the lawe of reason/& of the lawe of god. And that is called probable that appereth to many & specially to wyse men to be trewe. And therfore in euery lawe positiue well made is somwhat of the lawe of reason/& of the lawe of god: & to discerne the lawe of god & the lawe of reason fro the law positiue is very harde/& thoughe it be harde yet it is moche necessary in euery moral doctryne/& in all lawes made for the common welth. And that the lawe of man be Juste & rightwyse/two thynges be necessary/that is to say/ wysdome & auctorite. wysdome that he may Juge after reason/ what is to be done for the cõmunaltie/and what is expedient for a peasible conuersacion/& necessary sustentacion of thẽ. Auctoritie that he haue auctoritie to make lawes. For the lawe is named of Ligare: that is to say /to bynde. But the sentence of a wyse man dothe nat bynde the cõmunalte/if he haue no rewle ouer them. Also to euery good lawe be requyred these properties: that is to saye that it be honeste/ rightwyse/possible in it selfe/& after the custome of the countre/ conuenyente for the

place & tyme/necessary / profitable / & also manifeste that it be nat capcious by any darke sentēce ne myxte with any pryuate welth/but all made for the cōmon welth. And after saynt Bryget in the fourth boke in the .C.xxix. Chapitre / euery good law is ordeyned to the helthe of the soule & to the fulfillinge of the lawes of god : & to enduce the people to flye euill desyres & to do good warkȝ. Also as the cardinal of Camer̄ writtet what so euer is rightwyse in the lawe of mā is rightwyse in the law of god/for euery mānes lawe muste be cōsonant to the law of god. And therfore the lawes of prynces /the commaundemētes of prelates / the statutes of cōmynalties/ ne yet the ordinaunce of the Churche is nat rightwyse nor obligatorie/but it be cō sonant to the law of god. And of suche a law of man that is consonant to the law of god/it appereth who hath righte to lā des & goodes/& who nat: for what so euer a man hath by suche lawes of mā he hath rightwyslye. And what so euer is had a- gaynst suche lawes is vnrightwyslie had For lawes of mā nat contrary to the law of god/ nor to the lawe of reason muste be obserued in the lawe of the Joule / and he

that dispiseth thē dispiseth god & resisteth god. And furthermore as Gracian sayth because cuyll men fere to offende for fere of payne. Therfore it was necessary that diuers paynes shulde be ordeyned for dyuers offences/as Phisicions ordayne dyuers remedyes for seuerall dilleases. And suche paynes be ordeyned by the makers of lawes after the necessitie of the tyme/ and after the disposicio of the people. And thoughe that lawe that ordeyneth suche paynes hath therby a conformitie to the law of god: for that the law of god cōmaūdeth that the people shall take away cuyl from amonge them selfe/ yet they belōge nat so moche to the lawe of god/ but that other paynes stādyng the fyrste principles myghte be ordayned and appoynted/ and therfore that is the law that is called moste proprely the lawe positiue and the law of man. And the Phyloſopher sayd in the thyrde boke of his Etykes/ that the entēt of a maker of a lawe is to make the people good and to bryng them to vertue. And though I haue somwhat in a generalitie shewed the wherupon the law of Englāde is groūded. For of necessitie it muste be groūded of the sayde lawes / that is to

say of the lawe eternall/ of the lawe of reason/ & of the lawe of god. Neuertheleſſe I pray the ſhewe me more ſpecially where-vpon it is grounded as thou thynkeſt/ as thou before haſte promyſed to do.

¶ Student) I wyll with good wyll doo therin that lyeth in me/ for thou haſt ſhewed me a righte playne & a ſtrayte waye thereto. Therfore thou ſhalte vnderſtande that the lawe of Englande is grounded vpon fyue principall groũdes. Fyrſte it is grounded on the lawe of reaſon. Seconde on the lawe of god. Thyrdly on diuers generall cuſtomes of the realme. Fourthly of diuers principles that be called maxymes. Fyftly on diuers ptticuler cuſtomes Sixtly on diuers ſtatutes made in parliamentes by the kyng & by the cõmon coũcell of the realme/ of which groũdes I ſhal ſpeke by order as they be reherced before/ & fyrſte of the lawe of reaſon.

☞ Of the fyrſte groũde of the lawe of Englande. The.v. Chapitre.

Student) The fyrſte grounde of the lawe of Englande is the lawe of reaſon/ wherof thou haſte treated before

in the seconde chapitre/the whiche is kept in this realme as it is in al other realmes & as of necessitie it muste nedes be as thou hast sayd before. ¶ Doctour) But I wolde knowe what is called the lawe of nature after the lawes of Englãde. ¶ Student) It is nat vsed amonge them that be lerned in the lawes of Englande to reason what thynge is commaunded or prohibet by the lawe of nature & what nat: but all the resonynge in that behalfe is vndre thys maner: as when any thyng is grounded vpon the lawe of nature: they say that reason wyll that suche a thynge be done / & if it be phibite by the lawe of nature. They say it is agaynst reason or that reason will nat suffre that it be done. ¶ Doctoure) Then I praye the shewe me what they that be lerned in the lawes of the realme holde to be cõmaũded or prohibite by the lawe of nature vndre suche termes & after suche maner as is vsed amongest thẽ that be lerned in the sayde lawes. ¶ Student) There be put by them that be lerned in the lawes of Englãde two degrees of the lawe of reason/that is to say/ the lawe of reasõ primarie/& the lawe of reason secundarie by the lawe of reason primarie be phibite

in the lawes of Englande murther that is the deth of hym that is Innocēt/ perīu rie/disceyte/brekynge of the peace & many other lyke. And by the same law also it is lawfull for a mā to defende hī selfe agaīste an vniuste power so he kepe dewe circum-staunce. And also if any promyse be made by man as to the body it is by the law of reason voyde in the lawes of Englande. The other is called the lawe of secūdarie reason / the whiche is deuided in to two braunches/ that is to saye: in to the lawe of a secuudarie reason generall / and in to a lawe of secundarie reason perticuler. The lawe of a secundarie reason generall is groūded & deriued of that general law or generall custome of propretie whereby goodes mouable & vnmouable be brought in to a certayne propretie / so that euery man may knowe his owne thynge. And by this braūche be prohibited in the lawe of Englande disseasons/ trespasse in landes & goods rescues theftes vnlawfull with holdynge of another mānes goodes and suche other. And by the same lawe it is a groūde in the lawes of Englande that satisfaccion muste be made for a trespasse/ & that restitucīō muste be made of suche goo-

des as one man hath that belonge to ano ther man/that dettes muste by payde: co uenaũtes fulfulled & suche other. And be cause disseasons / trespasse in landes and goodes: theste & suche other had nat ben knowen/if the lawe of propretie had nat ben ordeyned. Therfore all thynges that be diriuied by reason out of the sayde law of propretie / be called the lawe of reason secundarie generall/ for that lawe of pro pretie is generally kept in al our coũtres. The lawe of reason secundarie perticuler is that lawe that is deriuied vpon diuers customes generall & perticuler & of diuers maximes & statutes ordeyned in this real me. And it is called the law of reason secũ darie perticuler because that reason i that case is deriuied of suche a law that is one ly holden for law in this realme/& in none other realme.

✻ Addition.

(Doctoure) I pray the shewe me some speciall case of suche law of reason secũda rie perticuler for an exãple. (Student) There is a law i Englãde/which is a law of custome that if a man take a distresse

lawfully that he shall put it in a pounde ouerte there to remayne tyll he be satisfied of that he distrayned for. And then thereupon maye be asked this question that if the beastes dye in poũde for lacke of meat at whose peryl dye they/whether dye they at the peryll of hym that distreyned or of hym that oweth the beastes. ¶ Doctoure If the law be as thou sayste & than a mã for a iuste cause taketh a distres & putteth it in pounde ouerte & no lawe compelleth hym that distreyneth to gyue thẽ meate/ then it semeth of reason that if the distres dye in pounde for lacke of meate / that it dyed at the peryll of hym that oweth the beastes & nat of hym that distrayned/ for i hym that distreyned there can be assigned no defaute/but in the other may be assigned a defaute/ because the rente was vnpayde. ¶ Student) Thou haste gyuen a trewe Iugement & who hath taughte the to do so/but reason diriued of the sayd generall custome. And the lawe is so full of suche secũdarie reasons diriued out of the generall customes & maximes of the realme that some men haue affermed that all the lawe of the realme is the law of reasõ: but that cã nat be pued as me semeth as

I haue partly shewed before & more fully wyll shewe after. And it is nat moche vsed in the lawes of Englande to reason what lawe is groũded vpon the law of the fyrst reason primary/ or of the law of reason se cũdarie/for they be moste cõmõly openly knowẽ of them selfe/but for the knowlege of the lawe of reason secũdarie is greater difficultie/& therfore therin dependeth moche the maner & forme of argumẽtes i the lawes of Englãde. And it is to be noted that all the deriuẽge of reason i the lawes of Englãde proceedeth of the fyrste principles of the lawe or of some thynge that is deriued of thẽ. And therfore no man may rightwisely Juge ne groũdly reason i the lawes of Englande if he be ygnoraũt in the fyrste principles. Also all byrdes/fowles/wylde beastes as beastes of forestes & warren & suche other be excepted by the lawes of Englande out of the sayd generall lawe & custome of pyretie. For by the lawes of the realme no propyetie maye be of them in any person oneles they be tame Neuertheless the egges of Hawkes/herõs/or suche other as buylde in the groũde of any person/be adiuged by the sayde lawes to be longe to hym that oweth the

☞ Of the.ii.grounde of the lawe of Englande.

The .vi. Chapitre.

STudent) The ſecõde grounde of the lawe of Englande is the lawe of god & therfore for puniſſhement of them that offended agaynſt the law of god/it is enquered in many courtes in this realme/ if any holde any oppynions ſecretely or in any other maner agaynſt the trewe catholicall faythe. And alſo if any generall cuſtome were directly agaynſte the lawe of god/or if any ſtatute were made directly agaynſt it/as if it were ordayned that no almeſſe ſhulde be gyuen for no neceſſitie that cuſtome & ſtatute were voyde. Neuertheleſſe the ſtatute made in the.xxiii. yere of kyng Edwarde the.iii. wherby it is ordayned that no man vnder payne of Impryſonemẽt ſhall gyue any almeſſe to any valyaunt beggers that may well laboure that they may ſo be compelled to laboure for theyr lyuynge is a good ſtatute / for it obſeruet h the intẽt of the law of god. And alſo by auctoritie of this lawe there is a

grounde in the lawes of Englande / that he that is accursed shall mayntayne no action in the kynges courte / except it be in very fewe cases so that the same excõmunicacion be certified before the kynges Justices in suche maner as the lawe of the realme hath appoynted. And by the auctoritie also of this grounde / the lawe of Englande amitteth the spirituell Jurisdiccio of dysmes and offerynges. And of all other thynges that of righte belonge vnto it. And receyueth also all lawes of the Churche dewly made and that excede nat the power of them that made them. In so moche that in many cases it behoueth the kinges Justices to iuge after the lawe of the Churche. ¶ Doctoure) Howe may that be that the kynges Justices shulde iuge in the kynges courtes after the lawe of the Churche / for it semeth that the Churche shuld rather gyue iugemente in suche thynges as it maymake lawe of the the kynge Justice. ¶ Studẽt) That may be done in many cases / wherof I shall for an exãple put this case. If a writ of right of warde be brought of the bodye. &c. And the tenaũt confessyng the tenour and the nõage of the Infãt / sayth that the Infãt

was maryed in his auncesters dayes. &c. wherupon .xii. men beswore which gyue this verdyt/that the Infãte was maryed in the lyfe of his auncestour. And that the woman in the lyfe of his auncestour sued a deuorce wherupon sentence was gyuen that they shulde be deuorced. And that the heyre appeled whiche hangeth yet vndiscussed prayenge the ayde of the Justice to knowe whether the Infante in this case shalbe sayd maryed or nat. In this case if the lawe of the Churche be that the sayde sentence of deuorce stãdeth in his strength & vertue vntyll it be adnulled vpõ the said appele. Than the Infante at the deth of his auncestoure was vnmaryed because the fyrste maryage was adnulled by that deuorce. And if the lawe of the Churche be that the sentence of that deuorce standeth nat in effecte tyll it be affermed vpon the sayde appele/then is the Infante yet maryed/so that the value of his maryage cã nat belõge vnto the lorde. And therfore in this case Jugemẽt conditionell shalbe gyuen. &c. And in lykewyse the kynges Justice in many other cases shall Juge after the lawe of the Churche lyke as the spirituell Juges muste in many cases forme

theyr Jugement after the kynges lawes.
¶ Doctoure) Howe may that be that the ſpirituel Juges ſhulde iuge after the king lawes. I pray the ſhewe me ſome certayn caſe therof. ¶ Studēt) Though it be ſom what a digreſſiō fro our fyrſt purpoſe/ yet I wyll nat with ſaye thy deſire / but wyll with good wyll put the a caſe or two ther of/that thou mayſte the better perceyue what I meane. If A. & B. haue goodes ioyntly / & A. by his laſte wyll byqueteth his porcion therin to C. and maketh the ſayde B. his executour & dyed/ & C. aſketh the execucion of this wyll in the ſpirituell courte. In this caſe the Juges there be bounde to Juge that wyll to be voyde: be-cauſe it is voyde by the lawe of the realme And in likewyſe if a mā be outlawed/ & aft by his wyll bequeteth certayn goodes to Johñ at ſtile/ & make his executours & dye the kynge ſeaſeth the goodes & after gy-ueth thē agayne to the executours/ & after Johñ at ſtyle ſuyth a citacion oute of the ſpirituell courte agayuſte the executours to haue execucion of the wyll / in this caſe the Juges of the ſpirituell court muſte iu-ge the wyll to be voyde as the lawe of the realme is that it is. And yet there is no

suche lawe of forfayture of goodes by out lagarie in the spirituell lawe.

☞ Of the thyrde grounde of the lawe of Englande. The.vii. Chapitre.

STudent) The thyrde grounde of the lawe of Englande standeth vpon diuerse generall customes of olde tyme vsed throughe all the realme: whiche haue ben accepted and approued by our soueraygne lorde the kynge and his progenitours and all theyr subgectes. And by cause the sayde customes be neyther agaynst the lawe of god/nor the lawe of reason/& haue ben alwaye taken to be good and necessarie for the cõmon welth of al the realme. Therfore they haue optayned the strẽghte of a lawe/in so moche that he that doth agaynste them dothe agaynste Justice. And these be the customes that proprely be called the common law. And it shall alway be determined by the Justices whether there be any suche generall custome or nat/and nat by.xii.men. And of these generall customes and of certayne principles that be called maxymes whiche also

take effecte by the olde custome of the realme/ as shall appere in the Chapitre nexte folowynge dependeth moste parte of the lawe of this realme. And therfore oure soueraygne lorde the kynge at his coronacion amonge other thynges taketh a solempne othe/ that he shall cause all the customes of hys realme faythfully to be obserued. ¶ Doctoure) I praye the shewe me some of these generall customes.
¶ Student) I wyll with good wyll /and fyrst I shall shewe the how the custome of the realme is the very grounde of diuers courtes in the realme/that is to say of the Chaũceric of the kyngea benche/of the cõmon place:& the Escheker / the whiche be courtes of recorde because none may sit as Juge i those courtes but by the kiges letters patẽtes. And these courtz haue diuers auctorites wherof it is nat to treate at thys tyme. Other courtz there be also only groũded by the custome of the realme: that be of moche lesse auctorite thẽ the courtz before reherced/as i euery shyre within the realme there is a court that is called the Coũtye/& another that is called the Shyrifes torne/ & i euery maner is a courte that is called a courte Baron. And to euery

fayre & market is incident a court that is called a court of pypowdres. And though in some statutes is made mēcion somtyme of the sayd courtes/yet neuertheles of the fyrste Institucion of the sayd courtes: and that suche courtes shulde be / there is no statute nor law writtē in the lawes of Englande. And so all the groūde & begynnig of the sayde courtes depēde vpō the custome of the realme the whiche custome is of so hygh auctorite that the sayde courtes ne theyr auctorities maye nat be altered / ne theyr names chaunged without Parlyament.

Also by the olde custome of the realme no mā shalbe takē iprysoned disseased nor otherwyse destroyed /but he be put to answere by the lawe of the lande: & this custome is cōfermed by the statute of Magna carta the.xxvi.chapitre.

Also by the olde custome of the realme all men great & small shal do & receyue Justice in the kinges courtes/& this custome is cōfermed by the statute of Marl' the.i. Chapitre.

Also by the olde custome of the realme the eldest sone is onely heyre to his aunce stour/ & if there be no sones but wughters

then all the doughters shalbe heyre: & so it is of susters & other kynneswomen. And if there be nother sone/doughter/brother/ nor suster/ then shall the enheritaunce discende to the nexte kynnesman or kynneswoman of the hole blode to hym that had the enhitaũce of howe many degrees so euer they be from hym. And if there be no heyre generall nor speciall/ than the lande shall Eschete to the lorde of whome the lande is holden.

Also by the olde custome of the realme landes shall neuer ascende/nor discẽde trõ the sone to the father or mother / nor to any other auncestre in the right lyne/ but it shall rather Eschete to the lorde of the fee.

Also if any alyẽ haue a sone that is an alyen & after is made Denizyn/ & hath another sone/& after purchaseth lãdes and dyed/the yõger sone shall enherite as heyr & nat the eldest.

Also if there be thre bretherne & the mydlest brother purchase landes & dyed without heyre of his body / the eldest brother shall inheryt as heyre to hym : & nat the ponger brother.

Also if lande in fee symple discẽde to

a man by the yte of his father & he dyed without heyre of his body/then that inheritaunce shall discende to the next heyre of the parte of his father. And if there be no suche heyre of the parte of his father/then if the father purchased the lādes it shal go to the next heyre of the fathers mother/ & nat to the next heyres of the sonesmother but it shall rather Eschete to the lorde of the fee: but if a man purchase lādes to him & to his heyres & dye without heyre of his body as is sayd before/ thē that lāde shall discēde to the next heyre of the parte of his father if there be any/ & if nat then to the next heyre of the parte of his mother.

Also if the sone purchaseth lādes i fee & dye without heyre of his body/the lande shall discende to his vncle & shall nat ascēde to his father / but if the father haue a sone thoughe it be many yeres after the deth of the elder brother/yet that sone shal put out his vncle & shall enioye the lande as heyre to his elder brother for euer.

Also by the custome of the realme the chylde that is borne before spousselles is bastarde & shall nat inheryte.

Also the custome of the realme is that no maner of goodes nor catalles reall nor

parsonell shall neuer go to the heyre / but to the executours / or to the ordinary or administratours.

Also the husbande shall haue all the Chatelles parsonelles that his wyfe had at the tyme of the spouselles or after: and also Chatelles real if he ouer lyue hys wyfe but if he sell or gyue away the Chatelles realles & dye by that sale or gyfte the entrest of the wyfe is determined / & els they shall remayne to the wyfe if she ouer lyue her husbande.

Also the husbãde shall haue all the inheritaũce of his wyfe wherof he was seased in dede in the right of his wyfe during the spouselles in fee or in fee tayle general or terme of lyfe / if he haue any chylde by her to holde as tenaunt by the curtesye of Englãde / & the wyfe shall haue the thyrde parte of the inheritaunce of her husbande wherof he was seased in dede or in lawe after the spouselles .&c. but in that case the wyfe at the deth of her husbande muste be of the age of .ix. yere or aboute / or els she shall haue no dowrye. ¶ Doctour) what if the husbande at his deth be within the age of .ix. yere. ¶ Student) I suppose she shall yet haue her dower.

Also the olde lawe & custome of the realme is that after the deth of euery tenãte that holdeth his landes by knyghtes seruice the lord shall haue the warde & mariage of the heyre tyll the heyre come to the age of.xxi. yere. And if the heyre in that case be of full age at the deth of his auncestre/ then he shall paye to his lorde his relyefe/whiche at the cõmon lawe was nat certayne/but by the statute of Magna carta/it is put in certayne: that is to saye for euery hole knyghtes fee to pay.C.s. And for a hole baronye to pay a.C. marke for relyef. And for a hole erledom to pay a.C. li. & after the rate. And if the heyre of such a tenaũt be a womã / & she at the dethe of her auncestre be within the age of.xiiii.yeres/then by the cõmon law she shuld haue ben inwarde onely tyll.xiiii. yere / but by the statute of westm̃ the fyrste in suche case she shalbe inwarde tyll.xvi.yere. And if at the deth of her auncestre she be of the age of.xiiii.yere or aboue/she shalbe out of warde/ though the lãdes be holden of the kynge. And thẽ she shall pay relyef as an heyre male shall.

Also of landes holden in socage if the auncestre dye/his heyre beynge withi the

age of.xiiii.yeres/the next kyn of the heyr to whome the inheritaũce may nat discen de shall haue the warde of his body & laundes tyll he shall come to the age of.xxi.yere/& thẽ he may entre. And whẽ the heyre cõmeth to the age of.xxi.yere/thẽ the gardeyn shall yelde hym accõpte for the pfettes therof by hym receyued.

Also suche an heyre in socage for his relyefe shall double his rent to the lorde the yere folowyng the deth of his auncestre/as if his aũcestre helde by.xii.ō.rente the heyre in the yere folowynge shall paye that.xii.ō.for his rẽt/& other.xii.ō for his relyef. And that relyefe he muste paye though he be within age at the deth of his auncestre.

Also there is an olde law & custome in this realme that a freholde by way of feffement gyfte or lease passeth nat without lyuery of season be made vpõ the lãde according though a dede of feffemẽt be therof made & deliuered: but by way of surrender particion & eschaũge a freholde maye passe without liuery.

Also if a mã make a wyll of lãde wher of he is seased i his demesne as of fee/that wyll is voyde/but if it had stande in feffes

handes it hath ben good. And also in London suche a wyll is good by the custome of the cytie if it be inrowled.

Also a lease for terme of yeres is but a chatel in the lawe/ & therfore it may passe without any liuery of season/but otherwise it is of a state for terme of lyfe for that is a freholde in the law/& therfore lyuerey muste be made therof or els the freholde passeth nat.

Also by the olde custome of the realme a man may distreyne for a rent seruice of cõmon right. And also for a rent reserued vpõ a gifte in tayle/a lease terme of lyfe/of yeres & at wyll/ & in suche case the lorde may distreyne the tenauntes of beestes as soon as they come vpõ the groũde/but the beastz of straũgers that come i but by maner of an escape/he may nat distreyne tyll they haue bẽ leuãt & couchãt vpõ the groũde:but for dette vpõ an obligaciõ nor vpõ a contracte/ nor for accompte ne yet for arerages of accõpte/ nor for no maner of trespasse/reparacions/ nor suche other no man may distreyne.

Also by the olde law & custome of the realme all yssues that shalbe ioyned betwixte partie & partie in any court of recor

de within the realme except a fewe wher-
of it nedeth nat to treate at thy tyme/muste
be tryed by.xii.fre & lawfull mē of the vi-
ne that be nat of affinitie to none of the
parties. And in other courtes that be nat
of recorde/as in the countye/court baron/
hundred & suche other lyke / they shalbe
tryed by the othe of the ptyes & nat other
wyse oncles the partyes assente that it
shalbe tryed by the homage. And it is to
be noted that lordes/Barons/ & all pyers
of the realme be excepted out of suche trial
les if they wyll/but if they wyll wylfully
be sworne therin/some say it is no errour
And they may if they wyll haue a writte
out of the Chauncerie directed to the
Shyryfe cōmaundynge hym that he shal
nat impanell them vpon no enquest.
And of this that is saydbefore it appereth
that the customes aforesayd nor other
lyke vnto thē/wherof be very many in the
lawes of Englande can nat be proued to
haue the strenght of a law onely by reasō
for how may it be proued by reason that
the eldest sone shall onely enherite his fa-
ther & the yōger to haue no parte / or that
the husbāde shall haue the hole lāde for ter
me of his lyfe as tenaunt by the courtesye

in suche maner as before appereth. And that the wyfe shall haue onely the thyrde parte in the name of her dower/ & that the husbande shall haue all the goodes of his wyfe as his owne. And that if he dye lyuynge the wyfe/ that his executours shall haue the goodes/ & nat the wyfe. All these & suche other can nat be proued onely by reason that it shulde be so & no otherwyse all though they be reasonable/ & that with the custome therin vsed suffiseth in the law And a statute made agaynst suche generall customs ought to be obserued because they be nat merely the law of reason.

Also the law of pyrcie is nat the law of reason / but a law of custome how be it that it is kept/ & is also right necessarie to be kept in all realmes & amõge all people And so it may be nõbred amõge the generall customes of the realme. And it is to vnderstande that there is no statute that treateth of the begynnyng of the sayd customes: ne why they shulde beholden for law. And therfore after thẽ that be lerned in the lawes of the realme: the olde custome of the realme is the onely & sufficiente auctoritie to them in that behalfe. And I pray the shewe me what doctours holde

therin / that is to say whether a custome onely be sufficient auctorite of any lawe. ¶ Doctoure) doctours holde that a law groũded vpon a custome is the moste sure=st lawe) but this muste alwaye vnderstã=de therwith that such a custome is nother cõtrarie to the lawe of reason / nor to the law of god. And now I pray the shewe me somwhat of the maxymes of the lawe of Englande wherof thou haste made mencio̅ before in the. iiii. chapitre. ¶ Studẽt) I wyll with good wyll.

☞ Of the. iiii. grounde of the lawe of Englande. The. viii. Chapitre.

STudent) The. iiii. groũde of the law of Englãde standeth in diuers princi=ples that be called in the lawe maxi=mes/the which haue ben alwaye take̅ for law i this realme/so that it is nat lawfull for none that is lerned to denye them / for euery one of those maximes is sufficiente auctorite to hym selfe. And whiche is a maxime / & whiche nat shall alway be de=termined by the Juges/& nat by. xii. men And it nedeth nat to assigne any reason/ why they were fyrste receyued for maxi=

mes for it suffiseth that they be nat againſt the law of reason nor the law of god/ and that they haue alway be taken for lawe. And suche maximes be nat onely holden for law/but also other cases lyke vnto thē & all thynges that necessarily folowyth vpō the same/ar to be reduced to lyke law And therfore moste cōmēly there be assigned some reasons or cōsideracion why suche maximes be resonable to the intente that other cases lyke may the more conuenyently be applyed to them. And they be of the same strength & effect in the law as statutes be. And though the generall custome of the realme be the strength & warraunte of the sayd maximes: as they be of the generall customes of the realme / yet because the sayd generall customes be in maner knowen throughe the realme as well to them that be vnlerned as lerned/ & may lightly be had & knowen and that with lytell studye. And the sayd maximes be onely knowē in the kynges courtes or amōge them that take great studie in the lawe of the realme/ & amonge fewe other persones. Therfore they be set in this writtynge for seuerall groundes & he that lysteth may so accompte them/ or if he wyll

he may take thē for one grounde after his pleasure/of whiche maxımes I shal hereafter shewe the parte.

¶ Fyrst there is a maxime that escuage vncertayne maketh knyghtes seruice.

¶ Also there is another maxime that escuage certayne maketh socage.

¶ Also that he that holdeth by castelgarde/holdeth by knyghtes seruice/but he holdeth nat by escuage. And that he that holdeth by.xx.s̄.to the garde of a castell holdeth by socage.

¶ Also there is a maxime that a discēt taketh awaye an entre.

¶ Also that no prescripcion in lādes maketh a ryght.

¶ Also that a prescripcion of rente & of profites aprendre out of lande maketh a ryghte.

¶ Also that the limitacīō of a p̄scripcīō generally takē is frō the tyme that no mānes mynde renuyth to the contrarie.

¶ Also that assignes may be made vpō lādes gyuē in fee for terme of lyfe/or for tēme of yeres though no mēcīō be made of assignes/& the same lawe is of a rent that is graūted/but otherwyse it is of a warāntie & of a couenaunte.

Also that a condicion to auoyde a freholde can nat be pleaded without dede/but to auoyde a gyft of a chatel it may be pleaded without dede.

Also that a releale or a confirmacion made by hym that at the tyme of the releale or cõfirmacion made had no eyghte is voyde in the law/though a righte come to hym after/except it be with warraũtye/ & thẽ it shall barre hym of all right that he shall haue after the warraũtye made.

Also that a right or title of acciõ that onely dependeth in accion can nat be gyuẽ nor graunted to none other but onely to the tenaunt of the groũde/ or to hym that hath the reuercion or remaynder of the same lande.

Also that in an accion of dette vpon a contracte the def. maye wage his law/but otherwyse it is vpõ a leale of lãdes for terme of yeres or at wyll.

Also that if an exigent in cale of felonye be awarded agaynste a man: he hathe therby forthwith forfeted his goodes to the kynge.

Also if the sone be attaited in the lyfe of the father/ and after he purchaseth his Chartour of pardon of the kynge/ & after

the father dyed. In this case the lãde shall Eschete to the lorde of the fee in so moche that that though he haue a yõgerbrother yet the lãde shall nat discende to hym / for by the atteyndre of the elder brother the blode is corrupte & the father in the lawe dyed without heyre.

Also if an Abbot or a Priour alyene the landes of his house & dyed/in that case though his successour haue right to the lãde/yet he may nat entre:but he muste take his actiõ that is appoynted hi by the law.

Also there is a maxime i the law that if a villayne purchase landes & the lord entre /he shall enioye the lãde as his owne/ but if the villayne alyene before the lorde entre/ that alienacion is good. And the same law is of goodes.

Also if a mã stele goodes to the value of.xii.d. or aboue it is felonye/and he shall dye for it. And if it be vnder the value of.xii.d.then it is but petite larcinie & he shall nat dye for it / but shalbe otherwyse punysshed after the discrecio of the Juges except it be take fro the person/for if a mã take any thynge howe lytell so euer it be/ from a mãnes yson felonously/it is called robbrye & he shall dye for it.

Also he that is arcyned vpon an Indi
temēt of felonie shalbe admitted i fauoure
of lyfe to chalēge.xxxv.iurours perēptorily
but if he chalēge any aboue that nombre/
the law taketh hi as one that hath refused
the law because he hath refused thre hole
enquestes/ & therfore he shal dye: but with
cause he may chalēge as many as he hath
cause of chalēge to. And further it is to be
vnderstāde that suche peremtorie chalēge
shall nat be admitted in appeale because
it is at the suyt of the partie.

Also the lande of euery man is in the
law enclosed frō other though it lye i the
opē felde. And therfore if a mā w a trespas
theri the writ shalbe quare clausū fregit.

Also that rētes/ cōmons of pasture of
turbary reuercīōs remayndres /nor suche
other thyngs which lye nat in manuell oc
cupacīō may nat be gyuen nor graūted to
none other without writtynge.

Also that he that recouereth dette or
damages in the kynges court by suche an
accīō within a Capias lay in to the ptesse
may withi a yere after the recouerie haue
a Capias ad satisfaciendū to take the bo-
dye of the defendaūt & to cōmit hi to pry-
son tyll he haue payd the dette & damags

but if there lay no Capias i the fyrst accio the the pleyntyfe shall haue no Capias ad satisfaciendū/but muste take a Fierifacias or an Elegit withi the yere:or a Scire fac after the yere or within the yere if he wyll.

Also if a release or confirmacio be made to hym:that at the tyme of the release made had no thynge in the lande.&c.the release or confirmacio is voyde except certai cases as to vouchye & certayne other whiche nede nat here to be remembred.

Also there is a maxime in the lawe of Englande that the kynge may dissease no man/ne that no man may dissease the kynge ne pull any reuercyon or remaynder out of hym.

Also the kynges excellencie is so hygh in the law that no freholde may be gyuen to the kynge ne be deriued from hym/but by matter of recorde.

Also there was somtyme a maxime & a lawe in Englande that no man shulde haue a writte of right:but by special suyt to the kynge. And for a fyne to be made in the Chaucerie for it/but these maxymes be chaūged bythe statute of Magna carta the.xvi.Chapi. where it is sayd thus Nulli negabim⁹ nulli vendemus rectum vel

rusticiam. And by the wordes nulli negabi
mus/a mā shall haue a writte of righte of
course in the Chaūcerie without suynge
to the kynge for it. And by the wordes nul
li vendem⁹. He shall haue it without fyne
and so many tymes the olde maximes of
the law be chaunged by statutes.

☞ Also though it be reasonable that for
the many solde diuersities of accions that
be in the lawes of Englande / that there
shulde be diuersities of processe as in the
reale accions after one maner/ & in perso-
nall accions after another maner: yet it
can nat be proued merely by reason that
the same processe ought to be had & none
other/for by statute it might be altered.
And so the groūde of the sayde processe is
to be referred onely to the maximes & cu-
stomes of the realmes. And I haue she-
wed the these maximes before reherced/
nat to the intēt to shew the specially what
is the cause of the law in thē/for that wol
de aske a great respite/but I haue shewed
them onely to the intēt that thou mayste
perceyue that the sayde maximes & other
lyke may conuenyently be sette for one of
the groundes of the lawes of Englande/
moreouer there be diuers cases/wherof I

am in doute whether they be onely maximes of the lawe or that they be grounded vpō the law of reason/wherin I pray the let me here thyn opinion. (Doctoure) I pray the shewe those cases that thou meanest: & I shall make the answere therin as I shall se cause.

☞ Hereafter foloweth diuers cases wherein the Student douteth whether they be onely maximes of the law or that they be grounded vpon the lawe of reason.

The.ix. Chapitre.

STudēt) The law of Englāde is that if a man cōmaunde another to do a trespasse & he doth it/that the cōmaūdour is a trespasser. And I am in doute whether that be onely by a maxime of the law/or that it be by the law of reason.

☞ Also I am in doute vpon what law it is grounded that the Accessory shall nat be put to answere before the principal. &c.

☞ Also the lawe is that if an Abbot bye a thyng that commeth to the vse of the howse & dyed that his successours shalbe charged/ & I am somwhat in doute vpon

what grounde that lawe dependeth.

Also that he that hathe possession of lande though it be by disseason hath right agaynste all men/ but agaynste hym that hath ryghte.

Also that if an accion reall be sued agaynste any man that hath nothyng i the thynge demaunded the writte shall abate as at the cõmon lawe.

Also that the alienaciõ of the tenaũt hangynge the writ nor his entre in to religion/or if he be made a knyghte / or if she be a woman & take an husbãde hangyng the writ/that the writ shall nat abate.

Also if lande & rent that is goyng out of the same lãde come in to one mãnes hãde of lyke estate & lyke suertye of tytle/ the rent is extincte.

Also if lande discende to hi that hath right to the same lande before / he shalbe remitted to his better tytle if he wyll.

Also if two tytles be concurrãt togyther/the eldest tytle shalbe preferred.

Also that euery man is bounde to make recompence for suche hurte as his beastes shall do in the corne or grasse of hys neyghboure though he knowe nat that they were there.

Also if the demaundaũt or playntyfe hangynge his writte wyll entre in to the thynge demaũded this writte shall abate. And it is many tymes very harde and of great difficultie to knowe what cases of the lawe of Englande be grounded vpon the law of reason / & what vpon custome of the realme / & thoughe it be harde to discusse it: yet is very necessary to be knowē for the knowele of the partyte reason of the lawe / & if any man thynke that these cases before rehersed be grounded vpon the lawe of reason / then he maye referre them to the fyrste grounde of the lawe of Englande whiche is the lawe of reason / wherof is made mencion in the. v. Chapi. And if any man thynke that they be groũded vpon the law of custome / then he may referre them to the maximes of the lawe / whiche be assigned for the thyrde grounde of the law of Englande / wherof mencion is made in the. viii. Chapitre. as before appereth.

¶ Doctoure) But I praye the shewe me by what auctoritie is it proued in the lawes of Englãde that the cases that thou haste put before in the. viii. Chapitre / and suche other whiche thou calleste maximes

oughte nat to be denyed / but ought to be taken as maximes/ for sythe they can nat be proued by reason as thou agreest thy selfe they can nat/they may as lightly be denied as affermed onles there be some sufficient auctoritie to approue thē. ¶Student) Many of the customes & maximes of the lawes of Englande be knowen by the vse and the custome of the realme so apparantly that it nedeth nat to haue any law written therof / for what nedeth it to haue any law written that the eldest sone shall enherite his father / or that all the doughters shall enherite togyther as one heyre/if there be no sone / or that the husbande shall haue the goodes & chatels of his wyfe that she hath at the tyme of the spousells or after / or that a bastarde shall nat enheryte as heyre/or that executours shall haue the disposicion of all the goodes of theyr testatoure:& if there be no executours that the ordinarie shall haue it/& that the heyre shall nat medled with the goodes of his auncestre:but any particuler custome helpe hym.The other maximes & customes of the law that be nat so openly knowen amonge the people maye be knowen partly by the lawe of reason:&

partly by the bokes of the lawes of Englãde called yeres of termes/& partly by diuers recordes remaynynge in the kynges courtes & in his treſorie. And ſpecially by a boke that is called the regeſtre/& alſo by diuers ſtatutes wherin many of the ſayde cuſtomes/& maximes be ofte reſited/as to a diligẽt ſercher wyll euidẽtly appere.

☞ Of the.v. grounde of the lawe of Englande. The.x. Chapitre.

STudent) The.v. groũde of the law of Englande ſtandeth in diuers particuler cuſtomes vſed in diuers countres townes/cyties/& lordſhyppes in this realme/the whiche ꝑticuler cuſtomes becauſe they be nat agaynſte the lawe of reaſon/nor the law of god/though they be agaĩſt the ſayde generall cuſtomes or maximes of the law: yet neuertheles they ſtande in effecte and be taken for law/but if it ryſe i queſtion in the kynges courtes whether there be any ſuche ꝑticuler cuſtome or nat it ſhalbe tryed by.xii.men/& nat by the Juges/except the ſame particuler cuſtome be of recorde in the ſame courte. Of whiche particuler cuſtomes/I haue hereafter no

ted some for an example.

¶ Fyrste there is a custome in Kēt that is called Gauelkynde/that al the brethern shall enherit togyther as systers at the common lawe.

¶ Also there is another particuler custome/that is called burghēglisshe wher the yōger sone shall enheryte before the eldest & that custome is in Notynghame.

¶ Also there is a custome in the cytie of Lōdon that frc mē there/ may by theyr testamēt inrouled byqueth theyr lādes that they be sealed of to whome they wyll/ except to mortmayn. And if they be cytizēs & frc men/then they may also byqueth lādes to mortmayne.

¶ Also in gauelkynde though the father be hanged the sone shal enheryt/ for theyr custome is the father to the bough/the son to the ploughe.

¶ Also in some countres the wyfe shall haue the halfe of the husbandes landes in the name of her dowrye as longe as she lyueth sole.

¶ Also in some cōutre the husbāde shall haue the halfe of the enheritaūce of hys wyfe/though he haue no yssue by her.

¶ Also in some cōutre an Infante when

he is of the age of .xv. yere maye make a feoffement/and the feoffement good. And in some countre when he can mete an elle of clothe .*.

☞Of the.vi.grounde of the lawe of Englande.The.xi.Chapitre.

STudent) The.vi.groũde of the lawe of Englãde standeth in dyuers statutes made by our soueraygne lord the kynge & his progenitours/& by the lordes spiritual & temporall/& the cõmons in diuers parlyamentes in suche cases where the law of reason / the law of god / customes/maxims/ne other groũdes of the law semed nat to be sufficiẽt to punysshe cuyll mẽ/& to rewarde good mẽ.And I remẽbre nat that I haue sene any other groũdes of the law of Englãde/but onely these that I haue before remẽbred. Furthermore it apperyth of that I haue sayd before that oft tymes two or thre groũdes of the lawe of Englãde must be ioyned togyther/or that the playntyfe cã open & declare his right/ as it may appere by thys example. If a mã entre in to another mãnes lande by force: & after maketh a feffemẽt for maintenaũce

to defraunde the pleyntyfe frō his accion. In this case it appereth that the sayd vn lawfull entre is phibite by the law of rea son /but the playntyfe shall recouer treble damages/that is by reason of the statute made in the.viii.yere of kyng Henry the. vi.the.ix.Cha. And that the dammages shalbe sealed.by.xii.men that is by the cu stome of the realme.And so in this case.iii. groūdes of the law of Englande mayntc ne the playntytes accion.And so it is in di uers other cases that nede nat to be remē= bred now.& thus I make an ende for this tyme/to speke any ferther of the groundes of the lawe of Englande. ¶ Doctoure) I thāke the for the greate payne that thou haste takē therin/ neuertheles for as mo= che as it appereth that thou haste sayde before that the lerned men of the lawe of Englande pretende / to verifie that the law of Englande wyll nothynge do/ne at tempte agaynst the law of reason/nor the law of god/I pray the āswere me to some questiōs groūded vpō the law of Englāde howe as the thynketh the law may stāde with reason or cōsciēce in the. ¶ Studēt) Put the case & I shal make answere theri as well as I can.

☞ The fyrst question of the Doctoure of the lawe of Englande and conſcience.

The. xii. Chapitre.

Doctoure) I haue harde ſay / that if a man that is boũde in an obligaciõ paye the money: but he taketh no acquitaunce or if he take one & it happeneth hĩ to leſe it/that in that caſe he ſhall be compelled by the lawes of Englande to paye the money agayne / & howe maye it be ſayd then/that that law ſtãdeth with reaſon or conſcience/for as it is grounded vpon the law of reaſon that dettes ought of right to be payde/ſo it is groũded vpon the law of reaſon(as me ſemeth)thatwhẽ they be payde that he that payed them ſhulde be diſcharged. ¶ Student) Fyrſte thou muſte vnderſtande that it is nat the law of Englãde/that if a mã that is boũde in an obligacion pay the money without acquitaunce/or if he take acquitaũce & leſe it: that therfore the law determineth that he ought of right to paye the money eſte ſones/for that lawe were bothe agayniſte reaſon & conſcience/ but trougth it is that there is a generall maxime in the lawe of Englande/that in an accion of dette ſued

vpon an obligacion / the defendaunt shall nat plede that he oweth nat the money / ne can in no wyse discarge hi selfe in that accion / but he haue acquitaunce or some other writtynge sufficiente in the lawe or some other thynge lyke / witnessynge that he hath payde the money / & that is ordayned by the lawe to auoyde a great inconuenience that els myght happen to come to many people that is to say that euery mā by a nude paroll and by a bare auerment shulde auoyde an oblygacyon / wherfore to auoyde that inconuenience the law hath ordayned that as the defendaūt is charged by a sufficiēt writting / that so he must be discharged by sufficiēt writtynge / or by some other thynge of as hygh auctorytye as the obligacion is. And though it may folowe therupon that in some particuler case a man by occasion of that generall maxime may be compelled to pay the money agayne that he payde before / yet neuertheles no defaute can be therfore assigned in the lawe. For lyke as makers of lawes take hede to suche thynges as maye oft fall / and do moste hurte amonge the people rather thē to particuler cases. So in lykewyse the generall groundes of the

lawe of Englande / hede more what is good for many/then what is good for one singuler person onely. And because it shulde be a hurte to many / if an obligacion shulde be so lightly auoyded by worde. Therfore the law specially preuēteth that hurte vnder suche maner as before appereth. And yet intendeth nat /nor commaūdeth nat that the money of ryghte ought to be payde agayne / but setteth a generall rule / whiche is good and necessary to all the people / & that euery man maye well kepe/without it be through his owne defaute /& if suche defaut happen in any persone/wherby he is without remedie at the common lawe: yet he may be holpen by a Sub pena/& so he maye in many other cases where conscience serueth for hym / that were to lōge to reherce now. ¶ Doctour) But I praye the shewe me vnder what maner a mā may beholpen by conscience. And whether he shalbe holpē in the same courte or in an other. ¶ Student) Because it can nat be well declared where a mā shalbe holpen by conscience & where nat/ but it be fyrst knowen what conscience is therfore because it perteyneth to themoste proprelye/to treate of the nature and qualitie of conscience/ therfore I praye the

that thou wylte make me some brief decla racion of the nature & qualitie of conscīēce and then I shall answere to thy question as well as I cā. ¶ Doctour) I wyll with good wyll do as thou sayste/ & to the intēt that thou mayste the better vnderstande that I shall say of conscience/ I shall fyrst shewe the what sinderesis is/ & then what reason is/ & then what conscience is. And howe these thre differ amōge them selfe I shall somwhat touche.

☞ what sinderesis is.
The.xiii. Chapitre ⁘

Doctoure) Sindceresis is a naturall power of the soule set i the hyghest parte therof/ mouynge & sterrynge it to good/ & abhorrynge euyll. And therefore Sinderesis neuer sinneth nor erreth. And this Sinderesis our lorde put in mā to the intent that the ordre of thynges shulde be obserued. For after sait Deonise the wysdome of god ioyneth the begynnynge of the secōde thynges to the laste of the fyrste thynges/ for Aungell is of a nature to vnderstande without serchynge of reason: & to that nature man is ioyned by

Sinderesis/the whiche Sinderesis maye nat hollye be extincted nether in man ne yet in dampned soules. But neuertheleſſe as to the vſe & exercyſe therof/ it may be let for a tyme eyther throughe the darkeneſſe of ignorannce/or for vndiſcrete delectacyō or for the hardnes of obſtinacie. Fyrſte by the darkenes of ygnorannce Sinderesis may be lette that it ſhall nat murmure agaynſt euyll/ becauſe he beleueth euyll to be good/as it is in heretykes/ the whiche when they dye for the wickydnes of theyr Errours beleue that they dye for the very trouthe of the fayth. And by vndiſcrete delectacion/ Sinderesis is somtyme ſo ouer layde that remorce or grudge of conſcięce for the tyme can haue no place. For the hardnes of obſtinacie ſinderesis is alſo let that it may nat ſtyrre to goodnes as it is in dampned ſoules that be ſo obſtinate in euyll/ that they may neuer be enclined to good. And though ſinderesis may be ſayd to that poynt extincte in dampned ſoules: yet it may nat be ſayd that it is fully extincte to all intentes. For they alway murmure agaynſt the euyll of the payne that they ſuffre for ſynne. And ſo it may nat be ſayde that it is vniuerſally/ & to all inten-

tes/ & to all tymes extincte/ and this synderesis is the begynnynge of all thynges that may be lerned by speculacion or studye/ and mynystreth the generall grounades & prycyples therof. And also of all thynges that are to be done by man/ an example of suche thynges as many be lerned by speculacō apperyth thus: synderesis sayth that euery hole thynge is more then any one parte of the same thyng/ & that is a sure groūde that neuer fayleth. And an exāple of thynges that are to be done/ or nat to be done: is where synderesis saythe: no euyll is to be done: but that goodnes is to be done & folowed/ & euyll to be fledde and suche other. And therfore synderesis is called by some men the lawe of reason / for it mynistreth the prynciples of the law of reson/ the whiche be in euery man by nature in that he is a reasonable creature.

☞ Of reason. The.xiiii.Chapitre.

DOctoure) whan the fyrste mā Adā was create / he receyued of god a double eye/ that is to say. An outwarde eye/ wherby he might se visible thynges/ & know his bodely enemyes & eschew

them.And an inwarde eye/that is the eye of the reason/wherby he myght se his spirituel enemyes that fyghteth agaynst his soule & beware of them. And amonge all gyftes that god gaue to man/this gifte of reasan is the moste noblest/for therby mā precelleth all beestes/& is made lyke to the dignitie of Aungelles/discernynge trouth from falsshede/& euyll frō good. wherfore he gothe farre from that effecte that he was madetowhē he taketh nat hede to the trouth:or whē he preferreth euyll before good.And therfore after Doctours reason is that power of the soule/that discerneth betwene good & euil/& betwene good & better cōparig the one to the other:the which also sheweth vtues/loueth god/& fleeth vices.And reasō is called ryghtwyse & good for it is conformable to the wyll of god & that is the fyrste thynge & the fyrste rewle that all thynges muste be rueled by / and reason that is nat rightwyse nor strayte: but that is sayd culpable is eyther because she is deceyued with an errour that might be onercome/ or els throughe her pryde or slouthfulnes she enquereth nat for knowelege of the trouth that ought to be enquered Also reason is deuided in two parties

that is to say in to the hygher parte / & in to the lower parte. The hygher parte hedeth heuenly thynges & eternall/and reasoneth by heuenly lawes/or by heuenly resons what is to be done / and what is nat to be done / and what thynges god commaundeth / and what he prohibiteth. And thys hygher parte of reason hath no regarde to transitorie thynges/ or temporall thynges: but that somtyme as it were by maner of councell she bryngeth forthe heuenly reasons/to ordre well temporall thynges. The lower parte of reson worketh moste to gouerne well temporall thynges. And she grounded her reasons moche vpon lawes of mã/ & vpõ reason of mã/wherby she concludeth that that is to be done / that is honest & expedient to the cõmõ welth/or nat to be done for it is nat expediẽt to the cõmon welth. And so that reason wherby I knowe god & suche thinges as pertcyne to god / belongeth to the hygheste parte of reason. And that reason wherby I knowe creatures belongeth to the lower pte of reason. And though these two partes/ that is to say/the hygher pte & the lower parte be won i dede & essence/ yet they differ by reason of theyr worknig

& of theyr office as it is of one self eye: that somtyme loketh vpwarde / and somtyme downewarde.

☞ Of conscience. The. xv. Chapitre.

DOctoure) This worde conscięce / whiche in latyn is called Cõsciẽcia is compowned of this prepolicion: cum / that is to say in englysshe: with / and with this nowne scientia / that is to say in englysshe knowlege / & so cõsciẽce is as moche to saye as knowelege of one thynge with another thynge / & conscience so takẽ is nothynge els / but an applienge of any scięce or knowlege to some particuler acte of mã. And so cõscience may somtyme erre & somtyme nat erre. And of cõscience thus taken doctours make many discriptions: wherof one doctoure sayth / that conscięce is the law of our vnderstãdyng. Another that conscience is an habite of the mynde discernyng betwixt good & euyll. Another that conscięce is the iugemẽt of reason / iugynge on the particuler actes of man / all which sayenges agre in one effecte / that is to say that cõscięce is an actuell applyeng of any cõnyng or knowlege to suche thyn-

ges as be done: wherupō it foloweth that
vpon the moste parfite knowlege of any
lawe or cunnyng. And of the most parfite
and moste true applyenge of the same / to
any particuler acte of man / foloweth the
moste pfite/the most pure/& the most beste
conscięce. And if therebe defaute in know-
ynge of the trouthe of suche a lawe / or in
the applyenge of the same to any pticuler
acte/than therupon foloweth an errour or
defaute in conscience/as it may appere by
this example. Synderesis ministeryth a
vniuersal principle yᵗ neuer erreth/that is
to say/that an vnlawful thige is nat to be
done. And than it myght be taken by some
man that euery othe is vnlawful/bycause
our lorde saythe Matth. v. Ye shall in no
wyse swere. And yet he that by reason of
the sayde wordes wyll holde that it is no
lawfull in no case to swere/ erreth in con-
scięce/for he hath nat the pfite knowlege
and vnderstandynge of the trouth of the
sayd gospel/nor he reduceth nat yᵗ sayeng
of scripture/to other scriptures/in whiche
it is graũted that i some case an othe may
be lawfull: and the cause why conscience
maye so erre in the sayd case and in other
lyke/ is bycause conscience is formed of

certayne particuler ꝓpoſition or queſtion groũded vpon vniuerſal rewles ordeyned for ſuche thynges as are to be done. And bycauſe a particuler ꝓpoſicion is nat knowen of hymſelfe/ but muſt appere & be ſerched by a diligẽt ſerche of reaſon/ therfore in that ſerche & in the conſcience that ſhulde be formed therupon may happen to be errour/ & therupon it is ſayd that there is errour in cõſcience/ whiche errour commeth eyther bycauſe he dothe nat aſſente to that he ought to aſſent vnto/ or els bycauſe his reaſon whereby he dothe referre one thynge to another is diſceyued. For further declaracion wherof it is to vnderſtande that errour in cõſcience cõmeth. vii. maner of wayes. Fyrſte is throughe ignorance: and that is whan a man knoweth nat what he ought to do/ & what he ought nat to do: and thau he ought to aſke conceyll of them that he thynketh moſte experte in that ſcience wherupon his doute ryſeth. And if he can haue no conceyll/ thã he muſte holly cõmyt hym to god: & he of his goodnes wyll ſo order hym/ that he wyll ſaue hym from offence. The ſeconde is throughe necligence/ as whan a man is necligent to ſerche his owne conſcience/

or to enquere the trouthe of other. The
thyrde is throughe pryde / as whan he
wyll nat meknyn hym selfe ne beleue them
that be better and wyser than he is.
The fourthe is throughe singularitie as
when a man foloweth his owne wyt / and
wyll nat conforme hym selfe to other / nor
folowe the good common wayes of good
men. The fyfth is through an inordinat
affeccion to hym selfe / wherby he maketh
cõsciensce to folowe his desyre / & so he cau
seth her to go out of her ryght course. The
sixte is throughe pusillaminite whereby
some persone dredeth oft tymes suche thin
ges as of reasõ he ought nat to drede. The
seuynth is throughe perplexitie / & that is
when a man beleueth hym selfe to be so set
betwyxte two sinnes yt he thynketh it vn-
possible / but that he shall fall in to the one
but a man can neuer be so proplexed ī ded
but through an Errour in conscience: & if
he wyll put away that errour he shalbe de
liuered. Therfore I praye the that thou
wylte alwayes haue a good conscience & if
thou haue so / thou shalt always be mery / &
if thyne owne herte reproue the nat thou
shalte alwayes haue inwarde peace. The
gladnes of rightewyse men is of god &

god/& theyr ioye is always in trouth and goodnes. There be many diuersities of cõ science/but there is none better then that/ wherby a man truely knoweth hym selfe. Many men know many great & hygh cõ nynge thynges:& yet know nat them selfe & truely he that knoweth nat hym self kno weth no thyng wel. Also he hath a good & a clene conscience/that hath puritie & clen nes in his herte/trouth in his worde/ and right wysenes in his dede. And as a lighte is sette in a lanterne that all that is in the house maye ben seen therby: so almyghty god hath sette conscience in the myddes of euery resonable soule as a lyght wherby he may discerne & know what he ought to do/ & what he ought nat to do. Therfore for as moche as it behoueth the to be occu pyed in suche thynges as perteyne to the lawe. It is necessary that thou euer holde a pure & a clene cõsciẽce/ specially in suche thyngs as cõcerne restitucion: for the syñe is nat forgyuen/ but the thynge that is wrongfully taken be restored. And I con ceyll the also that thou loue that is good/ and flye that is euyll/ and that thou do to another as thou woldest shulde be done to the: & that thou do no thynge to other that

thou woldest nat shulde be done to the. That thou do no thyng agaynste trouth/ that thou lyue peasablye with thy neyghboure/& that thou do iustice to euery man as moche as in the is. And also that in euery generall rule of the lawe/ thou do obserue & kepe equite: and if thou do thus I trust the lyght of thy lanterne/ that is thy conscience shall neuer be extyncted.

¶ Stud. But I pray the shewe me what is that equitie that thou haste spoken of byfore/ & that thou woldest that I shulde kepe. ¶ Doctour) I wyll with good wyll shewe the somwhat therof.

☞ what is Equytie.

The.xvi. Cha.

Doctoure. Equytie is a ryghtwystnes that considereth all the ytticuler circūstances of the dede/the whiche also is tempered wt the swetnes of mercy. And suche an equytie muste alway be obscrued in euery lawe of man/and in euery generall rule therof/& that knewe he well that sayd thus. Lawes couet to be rewled by equytie. And the wyse man sayth. Be nat ouer moche ryghtwyse: for the extreme ryghtwysenes is extreme wronge/ as who sayth: yf thou take all that the wor-

des of the lawe gyueth the / thou shalte somtyme do agaynste the lawe. And for the playner declaracion what equytie is thou shalte vnderstãde that syth the dedes and actes of men / for whiche lawes ben ordeyned happen in diuers maners infinitlye. It is nat possible to make any generat rule of the lawe/but that it shal fayle in some case. And therfore makers of lawes take hede to suche thynges as may often come & nat to euery particuler case/ for they couldc nat though they wolde. And therfore to folowe the wordes of the lawe/were in some case both agaynst Iustice & the comon welth: wherfore in some cases it is necessary to leue the wordes of the lawe/& to folowe that reason and Iustice requyreth/ & to that intent equytie is ordeyned:that is to say to temprc & mittigate the rygour of the lawe. And it is called also by some men Epicata/the whiche is no other thyng but an exception of the lawe of god/or of the lawe of reason from the general rules of yᵉ law of man:whan they by reason of theyr generalytie wolde in any particuler case iuge agaynste the lawe of god / or the lawe of reason / the whiche exception is secretly vnderstãde in

euery generall rule of euery positiue lawe. And so it appereth that equyte taketh nat awaye the very ryght/ but only that/ that semeth to be ryght by the general wordes of the lawe: nor it is nat ordeyned agaynst the crueltes of the lawe / for the lawe in suche case generally taken is good in hym selfe / but equytie foloweth the lawe in all particuler cases where ryght & Justice requyreth / nat withstandynge that a generall rule of the law be to the cõtrary: wherfore it appereth y^t^ if any lawe were made by man without any suche exception expressed or implyed it were manifestly vnresonable and were nat to be suffered / for such cases myght come that he that wolde observe that lawe shulde breke both the lawe of god & the lawe of reason. As if a man make a vowe that he wyl neuer eate whyte meate/ & after it happeneth hym to come there where he can gette none other meate. In this case it behouyth hym to breke his auowe / for that particuler case is excepted secretely frome his generall auowe by this equytie or eyrkay/ as it is sayd byfore. Also if a lawe were made in a cytie that no man vnder the payne of deth shulde open the gates of the cytie before

the sonne rysynge: yet if the cytezens by-
fore that houre sleynge frome theyr ennc-
myes come to the gates of the cytie/ & one
for saupnge of the cytyzens openeth the
gates byfore the houre appoynted by the
lawe/yet he offēdeth nat the lawe/for that
case is excepted frome the sayde generall
lawe by equytie/as is sayd byfore: and so
it appereth that equytie rather folowеth
the intent of the lawe/then the wordes of
the lawe. And I suppose that there be in
lykewyse some lyke equyties grounded
vpon the generall rules of the lawe of the
realme. ¶ Stud) ye verely wherof one is
this. There is a general phybicion in the
lawes of Englande: that it shall nat be
lawful to no man to entre into the freholde
of another w^out auctozitie of the owner
oz of the lawe: but yet it is excepted from
the sayd phybicion by the lawe of reason:
that if a man dryue beastes by the hyghe
waye & the beastes haphen to escape in to
the corne of his neyghboure. And he to
bryuge out his beastes that they shulde do
no hurte gothe in to the groūde & fetteth
out the beastes: there he shall iustifye that
entre in to the grounde by the lawe. Also
natwithstandyng the statute of Edwarde

the thyrde made the .23. yere of his reygne/ wherby it is ordeyned that no man vpon payne of imprisonement shulde gyue any almesse to any valiant begger/that is wel able to laboure: yet if a man mete with suche a valiãt begger in so colde a wether & so lyght apparell/ that if he haue no clothes he shall nat be able to come to any towne to haue succoure / but is lykely rather to dye by the waye: & he therfore gyueth hym apparell to saue his lyfe he shal be excused of the sayde statute by suche an exception of the lawe of reason as I haue spoken of. ¶ Doc. I knowe well that as thou sayest he shalbe exceptyd of the sayde statute by cõscience/ and ouer that/ that he shall haue great rewarde of god / for his good dede/ but I wold wytte whether the partie shalbe also discharged in the comon lawe by suche an exception of the lawe of reason or nat/ for though ignorañce inuincible of a statute excuse the partie agaynst god / yet as I haue herde it excuseth nat in the lawes of the realme / ne yet in the chauncerye as some say all thoughe the case be so that the partie to whome the forfeyture is gyuen may nat with cõscience leue it. ¶ Stud) verely by thy question

thou haste put me in a great doute/wher-
fore I praye the gyue me a respite therin
to make the an answere/but as I suppose
for the tyme howe be it I wyll nat fully
affirme it to be as I say/but it shulde seme
that he shulde well plede it for his discharge
at the comon lawe/ byeause it shalbe
taken that it was the intēt of the makers
of the statute to excepte suche cases. And
the Juges maye many tymes iuge after
the mynde of the makers as farre as the
letter may suffre & so it semyth they maye
in this case. And diuers other exceptions
there be also from other generall groūdes
of the law of the realme by such equyties/
as thou hast remembred byfore that were
to longe to reherce nowe. ¶ Docto². But
yet I pray the shewe me shortly somwhat
more of thy mynde vnder what maner a
man may be holpen i this realme by such
equytie. ¶ Student) I wyll with good
wyll shewe the somewhat therin.

¶ In what maner a man shalbe holpen by equyties in the lawes of Englāde. The. xvii. Chapitre.

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STudent) Fyrst it is to be vnderstande there be in many cases diuers exceptions from the generall groũdes of the lawe of the realme by other reasonable groundes of the same lawe / wherby a man shalbe holpen in the comon lawe / as it is of this generall groũde that it is nat lawful for no man to entre vpon a discent / yet for the reasonablenes of the lawe excepteth from that groũde an infante that hath ryght & hath suffered suche a discent / & hym also that maketh cõtinuell clayme and suffereth them to entre / natwithstandynge the dyscent . And of that exception they shall haue auantage in the comon lawe: & so it is lykewyse of diuers statutes as of the statute wherby it is phybit / that certayne particuler tenauntes shall do no waste : yet if a lease for terme of yeres be made to an infante that is within yeres of discrecion / as of y^c age of .x. or .xi. yeres and a stranger do waste / in this case this infante shal nat be punysshed for the wast / for he is excepted & excused by the lawe of reason . And a woman couerte to whome suche a lease is made after the couerture shalbe also discharged of waste after her husbandes deth by a reasonable maxime

and custome of the realme. And also for re paracions to be made vpon ye same groūde: it is lawfull for suche particuler tenantes to cute downe trees vpon the same groūde to make reparacions. But the cause there as I suppose is for that the mynde of the makers of the sayde estatute shalbe taken to be that / that case shulde be excepted. And in all these cases the parties shalbe holpen in the same courte & by the comon lawe. And thus it apperetb that somtyme a man may be excepted fro the rigoure of a maxime of the lawe by another maxime of the lawe. And somtyme fro the rigoure of a statute by the lawe of reason: and somtyme by the intent of the makers of the statute: but yet it is to be vnderstande that moste cōmonly where any thynge is excepted fro the generall customes or maximes of the lawes of the realme. By the lawe of reason the partie must haue his remedie by a wryt that is called Snb pena. yf a Subpena lye in the case: but where a Subpena lyeth / and where nat: it is nat our intent to treate of at this tyme. And in some case there is no remedye for suche an equytie by way of compulsion / but all the remedye therin muste be cōmitted to

the cõscience of the partie. ¶ Doctor) but in case where a Subpena lyeth to whom shal it be directed: whether to the Juge or to the partie. ¶ Stud) It shall neuer be directed to the Juge/but to the ptie plein-tyfe or to his attorney & therupon an in-iũction cõmaundynge them by the same vnder a certayne payne therin to be cõteyned that he ꝓcede no ferther at the comon lawe / tyll it be determined in the kynges chauncerye: whether the pleyntyfe hathe tytle in conscience to recouer or nat. And whan the pleyntife by reason of suche an iniũction ceasseth to aske any ferther ꝓ-cesse: the Juges wyll in lykewyse ceasse to make any ferther ꝓcesse in that behalfe.
¶ Doctour) Is there any mencion made in the lawes of Englande of any suche e-quyties. ¶ Stud) Of this terme equytie to that intent that is spoken of here there is no mencion made in the lawes of En-glande / but of an equytie dyrriuyed vpon certayne statutes mencion is made many tymes & often in the lawe of Englande. But that equytie is all of another effecte then this is/but of the effecte of this equy tie that we nowe speke of mẽcion is made many tymes / for it is ofte tymes argued

in the lawe of Englande where a Subpe na lyeth & where nat: and dayly bylles be made by men lernyd in the lawe of the realme to haue Sub penas. And it is nat prohybite by the lawe/ but that they may well do it so that they make them nat: but in case where they ought to be made & nat for veracion of the partie/ but accordynge to the trouth of the mater. And the lawe wyl in many cases that there shalbe suche remedye in the chauncerye vpon diuers thynges groundyd vpon suche equyties/ and than the lorde Chancellor must ordre his conscience after the rules & groũdes of the lawe of the realme/ in so moche that it had nat ben moche inconuenient to haue assigned suche remedye in the chauncerye vpon suche equyties for the. vii. groũde of the lawe of Englande/ but for as moche as no recorde remaynethe in the kynges courtes of no suche bylle ne of the wrytte of Sub pena or Iniunction that is suyd therupon: therfore it is nat sette as for a special groũde of the law/ but as a thynge that is suffred by the lawe. ¶ Doc. Then sythe the parties ought of ryght in many cases to be holpen in the chauncerye vpon suche equyties. It semeth that if it were

ordeyned by statute / that there shulde be no remedye vpon suche equyties in the chauncerye nor in none other place / but that euery mater shulde be orderyd onely by the rules & groũdes of the comon lawe: that that statute were agaynst ryght and cõscience. ¶ Studẽt) I thynke the same/ but I suppose there is no suche statute. ¶ Doc. There is a statute of that effecte as I haue herde saye / wherin I wolde gladly here thy oppinion. ¶ Student. Shewe me that statute & I shall wt good wyll saye as me thynketh therin.

¶ whether the statute herafter rehereed by the doctoure be agaynste cõscience or nat. The .xviii. Chapitre.

Doctoure. There is a statute made in the .iiii. yere of kynge Henry the fourth the .xxii. chapitre/ wherby it is enacted that iugementes gyuen in the kynges courtes / shall nat be examined in the chauncerye/ parliamẽt/ nor els where/ by whiche statute it apperyth that if any iugement be gyuen in the kynges courtes agaynst an equytie or agaynst any mater of conscience/ that there can be had no remedye by that equytie / for the iugement

can nat be reformed wᵗout examinacion / and the examinacion is be the sayd statute prohibit: wherfore it semyth that the sayd statute is agaynst cõscience/what is thyn oppinion therin. (Stud) If iugemẽtes gyuen in the kynges courtes shuld be examined in the chauncerye byfore the kyngs cõceyl or in any other place/the plaintifes or demandauntes shulde seldome come to the effecte of theyr suyte/ne the lawe shuld neuer haue ende. And therfore to eschewe that incõueniece yᵗ statute was made. And though perauẽture by reason of that statute/some singuler persone maye happen to haue losse. Neuertheless the sayde statute is very necessarye to eschewe many great vexacions and inuste expences that wolde els come to many plaintifes that haue ryghtwysely recouered in the kyngs courtes. And it is moche more puided for in the lawe of Englande that hurte nor damages shulde nat come to many than onelye to one. And also the sayde statute doth nat phybite equyte/but it phybiteth only the examinacion of the iugement for the eschewynge of the incõuenience byfore rehersed. And so it semethe that the sayde statute standeth with good conscience.

And in many other cases where a man doth the wronge/ yet he shall nat be cōpelled by waye of compulsion to reforme it / for many tymes it muste be lefte to the conscience of the partie / whether he wyll redresse it or nat . And in suche case he is in cōsciēce as well bounde to redresse it if he wyll saue his soule/ as he were if he were compellable therto by the lawe as it may appere in dyuers cases that maye be put vpon the same grounde. ¶ Doctour) I pray the put some of those cases for an example. ¶ Stud) If the defendant wage his lawe in an accion of dette brought vpon a true dette the plaintyfe hathe no meanes to come to his dette by waye of cōpulsion/neyther by Subpena nor other wyse/ & yet the defendaūt is bounde in conscience to pay hym. Also if the grande Jury in attaynt afferme a false verdit gyuen by the pety Jurye there is no further remedy but the cōsciēce of the partie . Also where there can be had no sufficiēt prouffe / there can be no remedye in the Chauncerye / no more than there maye be in the spirituall courte . And bycause thou haste gyuen an occasion to speke of conscience / I wolde gladly here thy oppynion where cōsciēce

shalbe ruled after the lawe/and where the lawe shalbe ruled after conscience. ¶ Doc. And of y^t mater I wolde lykewyse gladly here thy oppinion/specially in cases groũdyd vpon the lawes of Englande/for I haue nat herde but lytell therof in tyme past/but byfore thou put any cases therof: I wolde that thou woldest shewe me how those two questiõs after thy oppinion are to be vnderstande.

¶ Of what lawe this question is to be vnderstande: that is to say/where cõsciẽce shalbe ruled after the lawe. The. xix. Chapitre.

STudent. The lawe wherof mencion is made in this question: that is to say where conscience shalbe ruled by the lawe/is nat as me semeth to be vnderstande only of the lawe of reason/& of the lawe of god/but also of the lawe of man that is nat contrary to the lawe of reason nor the lawe of god: but that it is supperadded vnto them for the better ordering of the comon welth/for suche a lawe of man is alwayes to be sette as a rule in cõscience: so that it is nat lawful for no man to go fro it on the one syde ne on the other/

for suche a lawe of man hath nat only the strength of mannes lawe / but also of the lawe of reason/or of the law of god/ wherof it is dyrriued / for lawes made by man whiche haue receyued of god power to make lawes be made by god. And therfore cõscience muste be ordered by that lawe/ as it muste be vpon the lawe of god / & vpon the lawe of reason. And ferthermore that lawe whereof mẽcion is made in the latter ende of the chapitre next byfore: that is to saye in that question wherin it is asked where the lawe is to be lefte & forsaken for conscience/is nat to be vnderstande of the lawe of reason nor of the lawe of god: for tho two lawes maye nat be lefte/ nor it is nat to be vnderstande of the lawe of man that is made in particuler cases / & that is consonant to the lawe of reason / & to the lawe of god/ & that yet that lawe shuld be lefte for cõscience: for of suche a lawe made by man cõscience muste be ruled/as is sayd byfore. For it is nat to be vndepstãde of a lawe made by man cõmaundynge or prohybitynge any thynge to be done that is agaynste the lawe of reason or the lawe of god. For if any lawe made by man/bynde any person to any thyng that is agaynste

the sayd lawes/ it is no lawe/but a corrup cion & a manifeste errour. Therfore after them that be lerned in the lawes of Englande/the sayde question: that is to saye where the lawe is to be lefte for cõscience and where nat/is to be vnderstande in diuers maners & after diuers rules/ as here after shall somwhat be touched.

¶ Fyrste many vnlerned persones byleue that it is lawfull for them to do w^t good conscience/ all thynges whiche if they do them/they shall nat be punysshed therfore by the lawe/though the law doth nat warraunt them to do that they do/ but onely when it is done doth nat for some reasonable cõsideracion punysshe hym that dothe it/but leuyth it onely to his cõscience. And therfore many persones do oft tymes that they shulde nat do/ & kepe as theyr owne that/ that in cõsiẽce tey ought to restore/ wherof there is in the lawes of Englande this case. ¶ If two men haue a woode ioyntly/& the one of them selleth y^e wood & kepeth all the mony hollye to hym selfe. In this case his felowe shall haue no remedye agaynste hym by the lawe/ for as they whan they toke the woode ioyntlye put eche other in truste/ & were contented

to occupy togyther: so the lawe sufferyth them to ordre the profittes therof accordynge to the truste that eche of them put other in. And yet if one toke all the profittes/he is bounde in cõscience to restore the halfe to his felowe: for as the lawe gyueth hym ryght onlye to the halfe lande/ so it gyueth hym ryght only in cõsciẽce to the halfe pfittes. And yet neuertheles it can nat be sayd in that case/ that the lawe is agaynst cõscience/for the lawe neyther wylleth ne cõmaundyth that one shulde take all the pfittes/ but leuyth it to theyr cõsciẽce: so that no defaute can be founde in the lawe/but in hym that taketh al the profittes to hym selfe may be assigned defaute/whiche is bounde in conscience to reforme if he wyll saue his soule/ though he can nat be compelled therto by the lawe. And therfore in this case & other lyke/that opynion which some haue/that they may do with cõscience all that they shal nat be punysshed: for by the lawe if they do it/is to be lefte for cõsciẽce / but the lawe is nat to be lefte for conscience.

☞ Addicion.

☞ Also many men thynke that if a man haue lãde that another hath tytle to/if he

that hath the ryght shal nat by the accion that is gyuen hym by the law to recouere his ryght by: recouere damag̃/that then he that hath the lande is also discharged of damages in conscience: and that is a great errour in conscience/ for though he can nat be compelled to yelde the damag̃ by no mannes lawe/ yet he is compelled therto by the lawe of reason & by the lawe of god/ wherby we be bounde to do as we wolde be done to/and that we shal nat coueyte our neyghbours good. And therfore if tenant in tayle be disseased & the disseasour dyeth seased/ and then the heyre i the tayle bryngeth a Formedon & recouereth the lande/& no damages: for the lawe gyueth hym no damage in that case: yet the tenant by cõsciẽce is bounden to yelde damages to the heyre in tayle fro the dethe of his ancestre. Also it is taken by some men/ that the lawe muste be lefte for conscience where the lawe dothe nat suffre a man to denye yt he hath byfore affermed in court of record/or for that he hath wylfully excluded hym selfe therof for some other cause/as if the doughter that is only heyre to her father wyll sue lyuerey with her suster that is bastarde/in that case the

shall nat be after receyued to say that her
suster is bastarde: in so moche that if her
suster take halfe the lande with her/ there
is no remedy agaynst her by the law. And
no more there is of diuersite other esto-
pelles/which were to lõge to reherce now
And yet the partie that may take auanta
ge of such an estopel by the lawe/is boũde
in cõscience to forsake that auantage spe-
cially if he were so estopped by ignorance/
and nat by his owne knowlege & assent for
thoughe the lawe i suche cases gyueth no
remedye to hym that is estopped: yet the
law iugeth nat that the other hath rygh
vnto the thynge that is in variaunce by-
twyxte them. ¶ Also it is vnderstãde that
the lawe is to be lefte for cõscience/where a
thynge is tryed & foũde by verdit agaynst
the trouth/for in the comon law the iuge-
ment muste be gyuen accordynge as it is
pleaded & tried lyke as it is i other lawes/
that the iugement muste be gyuen accor-
dynge to that/ that is pleaded & proued.
¶ Also it is vnderstande that the lawe is
to be lefte for cõscience/where the cause of
the lawe doth cease: for whan the cause of
the lawe dothe cease / the lawe also dothe
cease in conscience/ as apperyth by this

case here after folowynge.

☞ Addicion.

A man maketh a lease for terme of lyfe/ & after a stranger doth waste / wherfore the lesse brigeth an accion of Trās & hath iugemēt to recouer damags hauyng regarde to the treble damags that he shal yelde to hym i the reuercion. And aft he in the reuercion byfore accion of waste sued dyeth: so y^t the accion of waste is thereby extincted/then the tenant for terme of lyfe (though he may sue execucion of the sayd iugemēt by the lawe) yet he may nat do it by conscience: for in conscience he maye take no more then he is hurted by the sayd trespasse / bycause he is nat chargyd ouer with the treble damages to his lessoure.

¶ Also it is vnderstande where a lawe is grounded vpon a presumpcion / for if the presumpcion be vntrue / then the lawe is nat to be holden in cōscience. And nowe I haue shewed the somwhat howe that question: that is to say where the lawe shalbe ruled after cōscience I pray the shewe me whether there be nat lyke diuersities in other lawes bytwyxte lawe & conscience.

¶ Docto^r) Yes verely very many whereof thou haste recyted one byfore / where a

thynge that is vntrue is pleaded & yuen/ in whiche case iugement muste be gyuen accordynge as well in the lawe Cyuile as in the lawe Canon. And another case is that if the heyre make nat his inuentory/ he shalbe bounde after the lawe Cyuile to all the dettes though the goodes amount nat to so moche. And the lawe Canon is nat agaynste that lawe / and yet in conscience the heyre whiche in the lawes of Englande is called an executour is nat in that case charged to the dettes/ but accordige to the value of the goodes. And nowe I pray the shewe me some cases where cõscience shalbe ruled after y^c^ lawe. ¶ Stud. I wyll w^t^ good wyll shewe the somwhat as me thynketh therin.

☞ Here folowyth dyuers cases where conscience is to be orderyd after the lawe. The .xx. Chapitre.

STudent) The eldest sone shall haue & enioy his father landes at the comon lawe in conscience / as he shall in the lawe. And in Burghenglysshe the yonger sone shall enioy the inheritannce/ & that in conscience. And in Gauelkynde all the sõnes shall inherite the lande togyther as

doughters at the comon lawe and that in cõsciẽce. And there can be none other cause assigned why cõscience in the fyrste case is with the eldest brother/ & in the seconde with the yonger brother/ and i the thyrde case with all the bretherne. But bycause the lawe of Englande by reason of diuers customes dothe somtyme gyue the lande hollye to the eldest sone / somtyme to the yongest/and somtyme to all.

¶ Also if a man of his mere motion make a feffemẽt of two acres of lande lyenge in two seuerall shyres/ & maketh lyuerey of season in the one acre in the name of both In this case the feffe hath ryght but only to that acre wherof lyuerey of season was made/bycause he hath no tytle by ye lawe: but if bothe acres had ben in one shyre he had had good ryght to both. And in these cases the diuersitie of the lawe makyth the diuersitie of conscience.

¶ Also if a man of his mere motion make a feffement of a maner & sayth nat to haue & to holde.&c. with the appurtynances / in that case the feffe hath right to ye demesne landes & to the rentes/if there be atturnament & to the comon parteynynge to the maner / but he hath nother ryght to the

aduowsons appendaunt if any be / nor to the bylleins regardant: but if this terme with thapurtynaũces had ben in the dede/ the feffe had had ryght in cõscience aswell to the aduowsons & bylleins/as to the residue of the maner: but if the kynge of his mere mocion gyue a maner with the appurtynaunces/ yet the wince hath neyther ryght in lawe nor cõscience to the aduowsons nor bylleins. And the diuersitie of the lawe in these cases maketh the diuersitie of conscience.

¶ Also if a man make a lease for terme of yeres yeldynge to hym & to his heyres a certayne rent vpon condicion that if the rent be behynde by .xl. dayes. &c. that then it shalbe lawful to the lessour & his heyres to entre. And after the rent is behynde the lessour askyth the rent accordynge to the lawe & it is nat payd/the lessour dyeth his heyre entreth. In this case his entre is lawfull bothe in lawe and conscience: but if the lessoure had dyed byfore he had demaũdyd the rent/ and his heyre demaũde the rent/ & bycause it is nat paydc he rentreth/in that case his rentre is nat lawfull nother in lawe nor in conscience.

¶ Also if the tenaunt in dower sowe her

lande and dye byfore her corne be rype/ that corne in conscience belongeth to her executours/ & nat to hym in the reuercion/ but otherwyse it is in cõscience of grasse & frutes. And the diuersitie of the lawe maketh ther also the diuersitie in cõscience.

¶ Also if a man seased of landes in his demesne as of fee / byquethyth the same by his last wyll to another and to his heyres and dyeth. In this case the heyre nat withstãdynge the wyll hath ryght to the lande in conscience. And the reason is bycause the lawe iugeth that wyll to be voyde: and as it is voyde in the lawe/ so it is voyde in conscience. ¶ Also if a man graunte a rente for terme of lyfe and make a lease of lande to the same graũte for terme of lyfe/ and the tenaunte alyeneth both in fee. In this case he in the reuercion hath good tytle to the lande/ both ī lawe & cõscience & nat to the rent. And the reason is bycause the lande by that alienacion is forfeyt by the lawe to hym ī the reuercion & nat ye rent.

☞ Addicion.

☞ Also if landes be gyuen to two men & to a woman in fee / & after one of the men entermarieth with the woman & alieneth the lande & dyeth. In this case the woman

hath ryght but onely to the thyrde parte/ but if the man & the woman had ben maryed togyther byfore the fyrste fettement/ then the woman natwithstādyng the alienacion of her husbande shulde haue had ryght in lawe & cōscience to the one halfe of the laude. And so in these two cases cōsciēce doth folowe the lawe of the realme.

¶ Also if a man haue two sones/ one byfore spousellys & another after spouselles/ & after the father dyeth seased of certayne landes. In that case the yonger sone shall enioye the landes in this realme as heyre to his father bothe in lawe & cōsciēce. And the cause is / byeause the sone borne after spousellys / is by the lawe of this realme the very heyre / and the elder sone is a bastard. And of these cases and many other lyke in the lawes of Englande maye be formed the Silogisme of cōscience/ or the true iugemēt of cōscience in this maner. Synderesis ministreth the maior thus. Ryghtwysenesse is to be done to euery man: vpon whiche maior the lawe of Englāde ministreth the minor thus. The inheritance belongeth to the sone borne aft spouselles / & nat to the sone borne byfore spouselles / then cōscience maketh the cō-

clusion & sayth therfore the inheritaunce is in cõsciẽce to be gyuen to the sone borne after spousellys. And so in other cases infinite may be formed by the lawe the Silogisme or the ryght iugemẽt of cõsciẽce: wherfore they that be lernyd in the lawe of the realme say that in euery case where any lawe is ordeyned for the disposicion of landes & goodes/ whiche is nat agaynst the lawe of god/ nor yet agaynst the lawe of reason/ that that lawe byndeth all them that be vnder the lawe in the courte of cõscience/ that is to say inwardly i his soule. And therfore it is somwhat to meruayle that spirituall men haue nat endeuored thẽselfe in tyme past to haue more knowlege of the kynges lawes then they haue done/ or that they yet do: for by the ignoraunce therof they be oft tymes ignorant of that/ that shuld ordre them accordynge to ryght & iustice/ as well cõcernyng thẽselfe as other yt come to them for cõceyll. And nowe for as moch as I haue answered to thy questions as well as I can: I praye the that thou wylte shewe me thy oppinion in diuers cases formed vpon the lawe of Eglande wherin I am in doute/ what is to be holden therin in conscience.

¶ Doctoure) Shewe me thy questions/ I wyll saye as me thynketh therin.

¶ The fyrste question of the student. The.xxi. Chapitre.

STudent) If an infaunt that is of the age of. xx. yere and hath reason and wysdome to gouerne hymselfe selleth his lande & with the money therof byeth other lande of greater value then the fyrst was & taketh the pfittes therof/ whether maye that infaunte aske his fyrste lande agayne ī cōsciēce/ as he may by the lawe. ¶ Doctour. what thynkest thou in that question. ¶ Stud) Me semeth that for as moche as the lawe of Englāde in this article is grounded vpon a presumption/ that is to saye that infauntes commonly afore they be of the age of.xxi.yeres be nat able to gouerne them selfe/ that yet for as moche as that presumpcion fayleth ī this infaūte that he may nat in this case with conscience aske the lande agayne that he hath solde to his great auauntage as byfore appereth. ¶ Doc. Is nat this sale of the infaunte and the feffemēt made therupon if any were voydable in the lawe. ¶ Stud. yes veryly. ¶ Doc. And if the

feffe haue no ryght by the bargayne / nor by the feffement made therupon : wherby ſhulde he then haue ryght therto as thou thynkeſt. ¶Stud. By conſcience as me thynketh for ye reaſon that I haue made byfore. ¶Doctor) And vpon what lawe ſhulde that cõſcience be groũded that thou ſpeakeſt of/for it can nat be groũded by the lawe of the realme as thou haſte ſayd thy ſelfe. And me thynketh that it can nat be grounded vpon the lawe of god/nor vpon the lawe of reaſon: for feffemẽtes nor contractes be nat grounded vpon neyther of tho lawes / but vpon the lawe of man.
¶Stud) After the lawe of propriete was ordayned/ the people myght nat conuenientlye lyue togyther without contractes/& therfore it ſemeth yt cõtracts be groũded vpon the lawe of reaſon/or at the leſte vpõ the lawe that is called Jus gentium.
¶Doct. Though contractes be groũded vpon that law that is called Jus gentiũ/ bycauſe they be ſo neceſſarye & ſo generall amonge all people / yet that proueth nat that cõtractes be groũded vpon the lawe of reaſon : for thoughe that lawe called Jus gentium be moche neceſſarye for the people yet it may be chaunged. And ther-

fore if it were ordayned by statute yᵗ there shulde be no sale of landꝛ/ne no cõtracte of goodes. And if any were that it shulde be voyde / so that euery man shuld cõtynewe styll seased of his landes & possessed of his goodes / the statute were good. And then if a man agaynst yᵗ statute solde his landꝛ for a sũme of money/yet the seller myght lawfully retayne his landꝛ accordynge to the statute. And then he were boũde to no more/but to repaye the money that he receyued with resonable crpẽces in that behalfe/and so ĩ lykewyse me thynketh that in this case the infant may with good cõscięce reentre in to his fyrst landꝛ/by cause the cõtracte after the maximes of the law of the realme is voydꝛ/for as I haue herde the maximes of the lawe be of as greate strengthe in the lawe as statutes. And so me thynketh that in this case the infaunt is boũde to no more/but only to repay the money to hym that he solde his lãdꝛ vnto/ with suche reasonable costes & charges as he hath sustaynꝛd by reason of the same. But if a man sell his landꝛ by a sufficiẽt & lawful cõtracte thoughe there lacketh lyuerye of seasen or such other solempnities of the lawe: yet the seller is bounde in con-

science to performe the contracte / but in this case the contracte is insufficient / & so me thynketh great diuersitie betwyxt the cases. ¶ Stud. For this tyme I holde me contented with thy opinion.

¶ The seconde question of the student. The. xxii. Chapitre.

STudent. If a man that hath landes for terme of lyfe be impanelled vpon an inquest / & therupon leseth ysshues & dyeth / where maye the ysshues be leuied vpon hym in the reuercion in cõscience as they may be by the lawe. ¶ Doct. If they maye be leuied by the lawe / what is the cause why thou doost doute whether they may be leuied by conscience. Studẽt) For there is a maxime in the lawes of Englande / that where two tytles ronne togyther / the eldeste tytle shalbe preferred. And in this case the tytle of hym in the reuercion is byfore the tytle of the forfetour of the ysshues. And therfore I doute somwhat whether they maye be lawfully leuyed. ¶ Doct. By that reason it symeth thou arte in doute what the lawe is in thys case / but that must necessarely be knowen / for els it where in vayne to argue what

conscience wyll therin. ¶ Stud. It is certayne that the lawe is suche/ & so it is lyke wyse if the husbande forfet yssues & dye/ tho yssues shalbe leuyed on the landes of the wyfe. ¶ Doct. And if the lawebe such it symeth that cõscience is so in lykewyse/ forsyth it is the lawe that for execucion of Justice euery man shalbe ipanelled when nede requyreth it semeth reasonable/ that if he wyll nat appere that he shulde haue some punysshemẽt for his nat appearãce: for els the lawe shulde be clerely frustrate in that poynt. And that payne as I haue herde is that he shal lese yssues to y^c kyng for his nat appearãce/ wherfore it semeth nat inconuenient nor agaynste conscience though the lawe be that tho yssues shalbe leuyed of hym i the reuercion/ for that cõdicion was secretlye vnderstande in the lawe to passe with the lease whã the lease was made. And therfore it is for y^c lessour to beware and to preuent that daunger at the makynge of the lease / or els it shalbe aiuged his owne defaute. And than this pertyculer maryme wherby suche yssues shall be leuyed vpon hym in the reuercyon is a pertyculer excepcyon in the lawe of Englande frõ that generall maryme that

thou haste remẽbred byfore: that is to say that where two tytles ronne togyther / that the eldest tytle shalbe preferred/ & so in this case that generall maxime in this poynt shall holde no place/ nother in lawe nor in cõscience/ for by this perticuler maxime the strengthe of that generall maxime is restreyned to euery intent/ that is to saye/ as well in lawe as in cõscience.

¶ The thyrde question of the student. The. xxiii. Chapitre.

STudẽt. If a tenant for terme of lyfe/ or for terme of yeres do waste wherby they be boũde by the lawe to yelde to hym in the reuercion treble damages. And shall also forfet the place wasted/ whether is he also bounde in conscience to pay the damages/ & to restore the place wasted immediatly after the waste done/ as he is the single damages/ or that he is nat bounde therto tyll the treble damages & the place wasted be recouered in the kynges courte.

¶ Doctour. Byfore iugemẽt gyuen of the treble damages and of the place wasted he is nat bounde in conscience to pay them. For it is vncertayne what he shulde pay/ but it suffiseth that he be redy tyl iugemẽt

be gyuen to yelde damages accordynge to the value of the waste / but after the iugement gyuen / he is bounden in cõscience to yelde the treble damages / & also the place wasted. And the same lawe is in all statutz penall / that is to saye / yᵗ no man is boũde in conscience to pay the penaltye tyll it be recouered by the lawe. ¶ Stud. whether maye he that hath offended agaynst suche a statute penal defende the accion & hynder the iugement to the intent he wolde nat paye the penaltie / but onely the single damagz. ¶ Doctour. If the accion be taken ryght wysely accordyng to the statute and vpon a iuste cause / the defendant maye in no wyse defende the accion / onles he haue a true dylatorie mater to plede: whiche shuld be hurtful to hym if he pleded it nat / though he be nat bounde to paye the penaltie tyll it be recouered.

¶ The fourth question of the studẽt. The. xxiiii. chapitre.

Student. If a man infeffe another in certayne lande vpon condicion that if he infeffe any other: that it shalbe lawfull for the feffour and his heyres to reentre &c. whether is this cõdicion good

in cõsciẽce though it be voyde in the lawe ¶ Doctour. what is the cause why this condicion is voyde in the lawe. ¶ Stud. The cause is this/by the lawe it is incidẽt to euery state of fee simple/that he that hath that estate may lawfully by the lawe & by the gyfte of the feffoure make a feffement therof. And than whan the feffoure restrayneth hym after that he shall make no feffement to no man agaynst his owne former graunt/ & also agaynste the purite of the state of a fee simple/the lawe iugeth the condicion to be voyde/but if the condicion had ben that he shulde nat haue infeffed suche a man/ or such a man that condicion had ben good/ for yet he myght infeffe other. ¶ Doctour. though the sayde cõdicion be agaynst the effecte of the standof a fee simple & also agaynste the lawe. Neuertheleſſe it is nat agaynst the intente that the parties agreed vpon and that at the tyme of the lyuerey. And for as moche as the intent of the partie was that if the feffe infeffed any man of the lande/that the the feffour shuld entre/ & to that intent the feffe toke the estate & after breke the intent it semeth that the lande in cõscience shulde returne to the feffour. ¶ Stud. the intent

of the parties in the lawes of Englande is voyde in many cases/that is to say if it be nat ordered accordyng to the lawe. As if a man of his mere mocion without any recompence intendynge to gyue landes to another & to his heyres make a dede vnto hym/wherby he gyueth hym the landes to haue & to holde to hym for euer intendyng that by that worde(for euer)the feffe shuld haue the lande to hym & to his heyres / in this case his intent is voyde/and the other shal haue the lande onely for terme of lyfe. Also if a man gyue landes to another & to his heyres for terme of.xx.yeres intēdyng that if the lessee dye within the terme/that than his heyres shulde enioye the lande durynge the terme. In this case his intēt is voyde/for by the lawe of the realme all chatellys reall and personall shall go to ye executoures/and nat to the heyre. Also if a man gyue landes to a man & to his wyfe/ and to the thyrde person intendynge that euery of them shulde take the thyrde parte of the lande as thre common persons shuld his intent is voyde/for the husbande and the wyfe as one persone in the lawe shall take onlye the one halfe & the thyrde person ye other half/ but these cases be alway

to be vnderstande where the sayde estates be made without ani recompence And for as moche as in this principall case/the intent of the feoffour is grounded agaynst the lawe: & that there is no recompence appointed for the feffement: me thynketh yt the feffour hath neyther right to the lande by lawe nor conscience / for if he shulde haue it by conscience/that cõscience shulde be grounded vpon the lawe of reason & yt it can nat/ for condicions be nat groũded vpõ the lawe of reason/but vpõ the maxymes & custome of the realme. And therfore it might be ordeyned by statute/that al condicions made vpõ lande shuld be voyd. And whã a condicio is voyde by the maximes of the lawe/it is as fully voyde to euery intent as if it were made voyde by statute/& so me thynketh that in this case the feffour hath no righte to the lande in law nor in conscience. ¶ Doctoure. I am content thy opinion stande tyll we shall haue hereafter a better leasure to speke ferther in this matter.

☞ The.v.question of the Student.
The.xxv.Chapitre.

STudent. If a fine with proclamacō be leuyed accordynge to the statute & no clayme made within .v. yeres. &c. whether is the righte of a straunger extincted thereby in conscience / as it is in the lawe. ¶ Doctoure. Upon what consideracion was that statute made. ¶ Studēt that the righte of landes and tenementes myghte be the more certaynly knowen and nat to be so uncertayne as they were byfore that statute. ¶ Doctoure. And whan any lawe of man is made for a cōmon welthe/or for a good peace and quietnes of the people/or for any inconuenience or hurte to be saued from them / that lawe is good thoughe percase it extincte the right of a straunger and must be kept in the courte of conscience for as it is said before in the .iii. chapitre. By lawes rightewysely made by man: it appereth who hath righte to the landes and goodes: for what so euer a man hathe by suche a lawe he hath it rightewisely. And what so euer he holdeth agaynste suche a lawe he holdeth vnrightwisely. And ferthermore as it is sayde there all lawes made by man / whiche be nat contrarye to the lawe of god muste be obser-

ued and kepte / and that in conscience.
And he that dispiseth them dispiseth god:
and that resisteth them resisteth god / also
it is to be vnderstande that possessions /
and the rights thereof be subiecte to the
lawes / so that they therefore with a cau
se reasonable maye be translated and alte
red from one man to another by the acte
of the lawe. And of this consideration
that lawe is grounded that by a contrac-
te made in feyres and markettes the pro
prietye is altered excepte the proprietye be
to the kynge / so that the byer paye tolle /
or do suche other thynges as is a custo-
med there to be done vpon suche contrac-
tes / and that the byer knoweth nat the
former proprietye. And in the lawe Ci
uile there is a lyke lawe that if a man ha
ue another mannes good with a title. ui.
pere thynkynge that he hath right to it
he hath the very right vnto the thynge:
and that was made for a lawe to the in-
tente that the proprietye and ryght of
thynges shulde nat be vncertayne / & that
variaunce & stryfe shulde nat be amonge
the people. And for as moche as the sayd
statute was ordayned to gyue a certeite of

title in the landes & tenemētes compryſed in the fyne/ It ſemeth that that fyne certified the title of all other/as well in conſcience as it dothe in the lawe. And ſythe I haue anſwered to thy queſtion I praye the let me knowe thy mynde in one queſtion concernynge tayled landes & than I will trouble the no ferther at this tyme.

☞ A queſtiō made by the Doctour/how certayne recoueries that be vſed i the kynges courtes to defete tayled lande may ſtande with conſcience. The.xxvi. Chapitre.

DOctour. I haue herde ſay that whā a man that is ſeaſed of lādes in the tayle ſelleth the lande. That it is cō monly vſed that he that byeth the lande ſhal for his ſuertye/& for the auoydyng of the tayle in that behalfe/cauſe ſome of his frendes to recouer the ſayde landes againſt the ſayd tenaunt in tayle: whiche recouerye as I haue ben credably enformed ſhal be had in this maner/ the demaundaūtes ſhall ſuppoſe in theyr writte & declaracion that the tenāt hath no entre /but by ſuche

a straunger as the byer shall liste to name & appointe / where in dede the demaundaunte neuer had possession therof / nor yet the sayde straunger. And thereupō the sayde tenaunte in tayle shall appere in the court & by couē & by assent of the parties / shall vouche to warrante one that he knoweth well hath nothynge to yelde in value. And that vouche shall appere & the demaundauntes shall declare agaynst hym / & therupon he shall take a day to enparle ī the same terme: & at that day by assent & couen of the partyes / he shall make defaulte vpō whiche default bycause it is a default in despite of the court / the demaundauntz shall haue iugemēt to recouer agaynst the tenaunt in tayle / & he ouer in value agaist the vouche & this iugement & recouery in value / is taken for a barre of the tayle forcuer / howe may it therfore be taken that that lawe standeth with conscīēce that as it semeth alloweth & fauoureth suche fayned recoueries. ¶ Studēt. If the tenāt in tayle sel the lāde for a certayn sūme of money as is agreed betwixte them at suche a pryce as is cōmonly vsed of other landes / & for the suertye of the sale suffereth suche a recouerye as is aforesayd / what is the

cause that moueth the to doubte whether the sayd contracte or the recouery made thereupon: for the suertye of the byer that hath truely payd his money for the same shuld stande with conscience. ¶ Doctour. Two thynges cause me to doute therein/ one is for that yᵗ act our lorde had gyuen the lande of byheste to Abrahan & to his sede/ that is to saye to his chyldren in possession alwaye to continue / he sayde to Moyses as it appereth Leuitice .xxv. the lande shall nat be solde for euer / for it is myne. And than our lorde assigned a certayne maner howe the lande might be redemed in the yere of Jubile if it were sold byfore: & for as moche as our lorde wolde that the lande so gyuen to Abraham & his chyldren shuld nat be solde for euer / it semeth yᵗ he dothe agaynst the ensample of god yᵗ alieneth or selleth the lãde that is gyuẽ to him & to his chyldrẽ as lãdes intayled be gyuen. Another cause is this: it appereth by the cõmaũdemẽt of god that thou shalt nat coueyt the house of thy neyghboure. &c. And if the cõcupiscẽce be prohibited more strõger the vnlawfull takinge & withholding therof is prohibit/ & for as moche as tayled lande whã the auncestre

is deed is a thynge that of right is belon
gynge to his heyre/for that he is heyre ac
cordynge to the gyfte/ how may that lãde
with right or conscience be holden frõ hym
¶ Studẽt. Nat withstandynge that pro-
hibicion of almighti god: whereby the lãde
that was gyuen to Abraham & to his seed
might nat be alieued for euer / yet landes
within walled townes might lawfully be
alieued for euer / excepte the landes of the
leuites as it appereth in the sayde chapi-
tre of Leuitici. xxv. And so it appereth yt
the sayd prohibicion was nat generall for
euery place: & that amonge the Jewes.
And it appereth also that it was gyuen
onely for Abraham & his chyldren / & so it
was nat generall to all people. And it ap-
pereth also that it extended nat but onely
to the lande of promission / as it appereth
by the wordes of the sayd chapitre/ where
it is sayde thus all the region of your pos
session shalbe solde vnder the condicion of
redemynge/ whereby appereth that lan-
des in other countres be nat bounde to yt
condicion/ and as they be nat bounde to yt
condicion: by the same reason / it folo-
weth that they be nat bounde to the same
succession. Therefore the sayde lawe

that wyll that the lande gyuen to Abrahã & to his seed shall nat be solde for euer/ bin deth no lande out of the lande of promis sion/& some men will say that sythen the passion of our lord was promulgate & know wen it byndeth nat there. And to the secõ de reason whiche is grounded vpon the cõ maũdemẽt of god: It must nedes be graũ ted that it is nat lawfully to any man vn lawfully to couete the howse of his neygh bour/& that than more stronger he maye nat vnlawfully take it from hym: but thã it remayneth for the yet to proue/howein this case this tayled lande that is solde by his auncestre/& whereof a recouery is had of recorde in the kynges courte maye be sayd the lande of the heyres. ¶ Doctour. that may be proued by the law of the real me/that is to say by the statute of westmi ster the seconde the fyrste chapitre/ where it is sayd thus. The wyll of the gyuer er pressely contayned in the dede of his gyfte shalbe from henceforth obserued/ so yt they to whome the tenementes be so gyuẽ shal nat haue power to alyen/ but that the lan des after theyr deth shall remayn to theyr issue or retourne to the donour if the issue fayle / by the whiche statute it appereth

euidently that though they to whome the tenementes were so gyuen alieued them away/that yet neuertheles they in law & conscience by reason of the sayde statute ought to remayn to the heyres according to the gyfte/for it is holden commonly by all Doctoures that the cõmaundementes & rewles of the lawe of mã or of a positiue lawe that is lawfully made/ bynde all yt be subiectes to that lawe accordyng to ye mynde of the maker & that in the court of conscience. ¶ Student. Doest thou thinke that if a man offende agaynst a statute penall that he offendeth in conscience admit that he do it nat of a wilfull disobedience for that he wyll nat obey the law/ for if he do it of disobedience I thynke he offẽdeth ¶ Doctour. If it be but onely a statute ye is called Popularc it byndeth nat in conscience to the payment of the penalitie/til it be recouered by the lawe. And than it dothe bynde in conscience/ but if a statute be made principally to remedy the hurte of the partye/ & for that hurte it gyueth a penaltye to the partye in that case the offendour of the statute is bounde immediatly to restore the damages to the value of the hurt as it is vpon the statute of waste/

but the penaltye aboue the hurte he is nat bounde to pay tyll iugement be gyuen as it is sayd byfore/but statutes by yᵉ which it is alligned who shall haue right or pro-pryte to these lādes & tenemēts/or to these goodes or catalles if it be nat agaynst the lawe of god/nor agaynst the lawe of reason bynde all them that be subgecte to the lawe in lawe & conscience/& suche a statute is the statute of westmunster the.ii.whereof we haue treated byfore / wherefore it muste be obserued in conscience. ¶ Stud. But some holde that the sayde statute of westmynster. the.ii. was made of a singularitie & presumpcion of many that were at the sayd parliament for exaltinge and magnifienge of theyr owne blode: & therefore they saye that that statute made by suche a presumpcion byndeth nat in conscience. ¶ Doctour. It is very perillous to iuge for certayne that the sayde statute was made of suche a presumpcion as thou spekest of/ for there be many considerations to proue that the sayd statute was nat made of suche a presumpcion but rather of a very good mynde of all the parlyamente/ or at the leste of the more parte thereof/ & for the common welthe of all the realme/

& fyrste in the kyng the whiche in the said parliament was the hede and moste chyef & principall parte of the parliament as he is in euery parliament / can nat be noted ne suche inst / For it is nat necessary nor it was nat than in vse that landes of the crowne shulde be entayled : & in spirituall men ne yet in certayne burgeses & cytizēs of the sayde parlyamente whiche at that tyme had no lande / there can be noted no suche singularitie / nor yet in the noble mē & gentilmen nor suche other as were of yᵉ sayd parliamēt & had landes & tenemēts It is nat good to iuge i certayn that they dyd it of suche a presūpcion / but it is good and expedient in this case as it is in other cases that be in doubte to holde the surer waye / and that is that it was made of charitie / to the intente that he nor the heyres of hym to whome the lande was gyuen shulde nat falle in to extreme poueryе / and thereby haplye to renne in to offence agaynste god / and thoughe it were trewe as they saye that it was nat made of charytie but of presumpcion and singularitie as they spake of. Neuertheless for as moche as the statute is nat agaynste the lawe of god nor agaynste the lawe of

reason it must be obserued by all the that be subiectes vnto that lawe/ For as Johñ Gerson sayth in the treatyse that he entituleth in latine De vita spirituali anime: the fourth lesson & the thyrde corollarie: sayth that god wyl that makers of lawes iuge only of outwarde thynges & reserue secrete thinges to him. And so it appereth that man maye nat iuge of the inward intent of the deed/but of suche thynges as be apparaũt/& certayne it is that it is nat apparaunte that there was any suche corrupte entent in the makers of the sayd statute/howe may it therfore be sayd that y' lawe is good or rightwyse/ that nat only suffereth suche thynges agaynst the statute/but also agayust the commaundement of god. ¶ Studẽt. To that some answere & say: that whan the lande is solde & a recouery is had therupon in the kiges court of recorde that it suffiseth to barre the tayle in conscience / for they saye that as the tayle was fyrste ordayned by the lawe. So they saye that by the lawe it is adnulled agayne. ¶ Doctoure. Be thou thy self iuge if in that case there be lyke auctorite in the makynge of the tayle as there is in the adnullynge therof / for it was ordayn-

ned by auctorite of parliament/the which is alway taken for the moste hyghe court in this realme byfore any other/ and it is anulled by a false suppoſell: for that that they that be named demaundaũtes ſhulde haue right to the lande where in trouthe they neuer had right therto: whereupõ folweth a falſe ſuppoſell in the writte/ & a falſe ſuppoſell in the declaracion & a voucher to warraũte by couyn of ſuche a perſon as hath nothynge to yelde in value & thereupon by couyn & collucion of the parties folweth the default of the voucher: by the whiche default the iugement ſhall be gyuen. And ſo al that iugemente is deriuyed & grounded of the vntrue ſuppoſell & ouyn of the parties/ whereby the lawe of realme that hath ordayned ſuche a writte of entre to helpe them that haue righte to landes or tenementes is defrauded: the courte is deſceyued the heyre is diſherited: & as it is to doubte the byer & the ſeller & theyr heyres & aſſignes hauing knowlege of the tayle be bounde to reſtitucion/ and verily I haue herde many tymes/that aft the lawe of the realme ſuche recoueries ſhulde be no barre to the heyre in the tayle if the lawe of the realme might be therein

indifferently harde. ¶ Studēt. I can nat se but that after the lawe of the realme it is a barre of the tayle/ for whan the tenāt in tayle hath vouched to warrauntie/and the vouchee hathe appered & entred into the warrauntye/& after hath made defaut in despite of the court: whereupō iugemēt is gyuen for the demaundaunt agaynst the tenaunt/& for the tenaunt that he shal recouer in value agaynst the vouchee/ the heyre in the tayle shulde after bryng his formedone and recouer the landes intayled/ and after the vouchee purchaseth landes/than shulde the heyre also haue execucion agaynst hym to the value of the landes entayled as heyre to his auncestre whiche was tenaunt in the fyrst action: and so he shulde haue his owne landes/ and also the landes recouered in value: and therefore bycause of that presumpcion that the vouchee maye purchase landes after the iugement/ some be of opinion that it is in the lawe a good barre of the tayle. ¶ Doctor. I suppose that in that case thou haste put that the vouche maye barre the heyre in tayle of his recouerie in value bycause he hath recouered the fyrste landes. Neuertheless I wyll take a respite to be aduised

of that recouerye in value. And if thou can yet shewe me any other consideracion why the sayde recoueries shuld stãde with conscience/ I praye the let me here thy cõceyte therein/for the multitude of the said recoueries is so great that it were greate pytye that all they shuld be bounde to restitucion that haue landes by suche recoueries syth there is none that as far as I can here disposeth them to restore.

¶ Student. Some men make an other reason to proue that the sayde recoueries shulde be sufficient by the lawe to a voyde the state of wast. than & if they be sufficiẽt therto/they be sufficient in conscience.

¶ Doctour. what is theyr reason therin.

¶ Student. In the. viii. yere of kynge Hẽry the. viii. the. viii. chapitre amonge other thynges it is enacted / that all recouerers theyr heyres & assignes may aduowe and iustifie for rentes seruice and customes by them recouered: as they agaynste whome they recouered mighte haue done. And than they saye that whã the parliamẽt gaue to suche recouerers auctorite to aduowe & iustifie for suche rẽtes customes & seruices as they recouered/that y^e entẽt of the parliament was y^t suche recouers

shulde haue right to that: for the whiche they shulde aduowe or iustifi: for els they saye that it shuld be in vayne to gyue the suche powe/ & that the parliament shulde els be take in maner as fortifiers of wrõg full titles: & so they say that suche recouerers by reason of the sayde statute haue right by the law. ¶ Doctour. That statute as it semeth was made onely to gyue to the recouerers a forme to aduowe & iustyfie/ whiche they had nat byfore though they had recouered vpon a good tytle. And the cause why they had no forme to aduowe or iustifie byfore the sayde statute was for as moche as the recouerers dyd nat by the pretence of theyr accio afferme the possession of him or the agaist whome they recouered/nor claymed nat by them/ but rather disafermed and distroyed theyr astate. And therfore they cã nat alege any continaunce of theyr title by the/ as they may that haue rentes or seruices/ or such other of the graunt of other by dede or by fyne. And therfore as it semeth the moste principall intent of that statute was: that suche recouerers shuld auowe & iustify for rentes seruices & customes as they shulde or might do that had them by fine or dede

nat hauinge any respect as it semeth whe
ther they recouered agaynst tenaũt in fee
simple or in fee tayle/ nor whether the re-
coueries were had vpon a rightfull title.
And therfore as me semeth the sayd esta-
ute neyther affermeth nor disaffermeth
the title of the recoueries wherby they do
aduowe for if a man had right byfore the
recouerye that right shulde remayne vnto
hym natwithstandynge the sayd statute:
& so me semeth that the title of them that
haue the landes entayled by suche recoue-
ries is nothynge fortyfyed nor affermyd
by the said estatute but that they are i the
same case as they were byfore: what thyn
kest thou therin. ¶ Student / this mater
is great/for as thou sayste there be so ma
ny that haue tayled landes by suche reco-
ueries/that it were great pytie & heuynes
to condempne so many persones & to iuge
that they all were bounde to restitucion:
For I thynke there be but fewe i this real
me that haue landes of any notable value
but that they or theyr aũcestours/or some
other by whome they clayme haue had
parte therof by suche recoueries/ In so mo
che that lordes spirituall & tẽporal knygh
tes/squyres ryche men/& poore/monaste-

ries/colleges/and hospitalles haue suche landes/for suche recoueries haue ben vsed of longe tyme/ who may thynke therfore without great heuines that so many men shulde be bounde to restitucion / and that yet as thou sayste/no man disposeth hym to make restitucion. And so I am in maner perplered and wot nat what to saye in this case / but that yet I truste that ignoraunce maye excuse many persons in this behalfe. ¶ Doctoure. Ignoraunce of the dede maye excuse / but ignoraunce of the lawe excuseth nat but it be inuincible/ that is to saye that they haue done that in them is to knowe the trouthe as to counsell with lerned men: and to aske the what the lawe is in that behalfe and if they answere them that they may do this or that lawfully/than they be thereby excused in conscience / but yet in mannes lawe they be nat thereby discharged / but they that haue taken vpon them to haue knowlege of the lawe be nat excused by ignoraunce of the lawe/ne no more are they that haue a wilfull ignoraunce & that wolde rather be ignoraunt than to know the trouth. And therfore they will nat dispose them to aske any councell in it / & if it be of a thynge

that is agaynste the lawe of god / or the lawe of reason/ no man shalbe excused by ignorauncc/and so there be but fewe that be excused by ignoraũce. ¶ Studēt. what than shall we condempne so many & so no table men. ¶ Doctour. we shall nat condempne them / but we shall shewe them theyr peryll. ¶ Student. yet I truste that theyr daunger is nat so greate that they shulde be bounde to restitucion. For Johā Gerson sayth in the sayd boke called De vnitate ecclesiastica considcracione secunda/quod cōmunis error facitius. That is to saye a common errour maketh a right/ of whiche wordes as it semeth some trust maye be had/that though it were fully admitted that the sayd recoueries were fyrst had vpon an vnlawfull grounde and agaynste the good ordre of conscience that yet neuertheles for as moche as they haue ben vsed of longe tyme/so that they haue ben taken of diuers men that haue ben righte well lerned in maner as for a lawe/ that the byers partly be excused so yt they be nat bounde to restitucio. And moreouer it is certeyn that yt statute of westm the. 2 nor none other statute made by mā cā nat be of greater vertue or strength/ thā was

the bonde of matrimonie that was ordayned by god. And though that bonde of matrimoni was indissoluble/yet neuertheles Moyses suffred a byll of refusell to the Jewes/whiche in latine is called Libellū repudii/and so they mighte thereby forsake theyr wyfes. As it appereth Deutro.xxiii. & therefore lyke as a dispensacion was sufred agaynst that bōde/so it semeth it may be agaynst this statute. ¶ Doctour. as to that reason that thou haste laste made of a byll of refusell/let all purchasours of lāde here what our lorde sayth in the Gospell to the Jewes of that byll of refusell Mathei.xix. where he sayth thus/ To the hardnes of iour hertes / Moyses suffred you to leue your wyfes/ for at the begynnynge it was nat so / of whiche wordes Doctours holde commonly that thoughe suche a byll of refusell was lawfull so that they y^t refused theyr wyfes therby/ shulde be without payne in the lawe / that yet it was neuer lawfull so that it shuld be without synne. And so likewyse it may be sayd in this case / that suche recoueries be suffred for the hardnes of the hertes of Englisshemen / whiche desyre lande & possessions with so great gredynes that they cā

nat be withdrawne from it neyther by the lawe of god/nor by the lawe of the realme And therefore that ryche men shulde nat take the possessions of poore mē from thē by power without coloure of title/ that is to saye eyther by open dissesion / or by the onely sale of the tenaunte in tayle & so to holde them agaynste the expresse wordes of the statute / suche recouerys haue ben suffred. And though for theyr great multitude they maye haplye be without payne as to the lawe of the realme : yet it is to feare that they be nat without offence as agaynst god/& as to thy other reason that a common errour shulde make a right those wordes as me semeth be to be thus vnderstande/that a custome vsed agaynst the lawe of man shalbe taken in some coūtres for lawe if the people be suffred so to continue. And yet some mē call suche a custome an errour bycause that the continuance of that custome agaynst the lawe: was partlye an errour in yᵉ people/ for that yᵗ they wolde nat obey to the law that was made by theyr superiours to the contrarye of yᵗ custome: but it is to be vnderstande that the sayd recouerie though they haue ben longe vsed may nat be taken to haue the

strength of a custome / for many as well lerned as vnlerned haue alwaye spoke agaynste the and yet do. And furthermore as I haue herde say a custome or a prescripcion in this realme agaynste the statutes of the realme preuayle nat in the lawe.

¶ Studēt. Though a custome in this realme preuayleth nat agaynst a statute as to the lawe / yet it semeth that it may preuayle agaynste the statute in conscience / for though ignorance of a statute excuseth nat in the lawe / neuertheles it may excuse in conscience / & so it semeth that it may do of a custome. ¶ Doctour. But if suche recoueries can nat be brought in to a lawful custome in the lawe / it semeth they maye nat be brought in to a custome in conscience / for conscience muste alway be groūded vpon some lawe: & in this case it can nat be grounded vpon the lawe of reason / nor vpon the lawe of god: and therefore if the lawe of man serue nat / there is no groūde wherupon conscience in this case may be grounded / & at the begynnynge of suche recoueries they were taken to be goood / bycause the lawe shuld warraunt them to be good and nat by reason of any custome and so if the reason of the lawe wyll nat

ſerue in the recoueries/the cuſtome cā nat helpe for an cupll cuſtome is to be put a=
waye. And therfore me ſemeth that the recoueries be nat without offence againſt god / thoughe haplye for theyr great mul titude / and that there ſhulde nat be as it were a ſubuerſion of the inheritaunce of many in this realme: as well of ſpirituall as temporall / they be withoute payne in the lawe of the realme: excepte ſuche reco ueries as by the commō courſe of the law be voydable in the lawe by reaſon of ſome vſe/or of ſome other ſpeciall matter / but what payne that is I wyll nat temerouſ=ly iuge / but committe it to the goodnes of our lorde whoſe iugementes be very de pe and profounde/nor I wyll nat fully af=ferme that they that haue landes by ſu=che recoueries oughte to be compelled to reſtitucion / but this ſemeth to me to be good counceil that euery mā hereafter hol de that is certayne & leue that is vncertaī & that is that he kepe hym ſelf from ſuche recoueries and than he ſhalbe fre from all ſcrupulouſnes of conſcience/in that behalf

¶ Student. It ſemeth that in this queſ=tion thou pondereſt greatly the ſayde ſta tute of weſtm. the.ii.& that thoughe it be

but onely a lawe made by mā/that yet for as moche as it is nat agaynst the lawe of reason/nor the lawe of god/thou thynkest that it muste be holden in conscience/ and ouer that as it semeth thou arte somwhat in doubte whether those recoueries be any barre to the heyre in the tayle by the lawe of the realme onles that he haue in value in dede vpon the voucher/& that thou wilt thereupō take a respite or thou shewe thy full mynde therein/& in lyke wyse thou thinkest as I take it that those recoueries can nat be brought in to a custome but that ye longer that they be suffred to continue if they be nat good by the lawe the greater is the offence agaynst god. And therfore thou pondereste litle that custome / but yet thou agreest that it is good to spare the multitude of them that be paste:leste a subuersion of the inheritaunce of many of thy realme might folowe & great stryfe & variaunce also:if they shulde be adnulled for the tyme past:except there be any other especiall cause to auoyde them by the lawe as thou haste touched in thy laste reason/ but thou thynkest that it were good that from henceforth suche recoueryes shuld be clerely prohibit & nat be suffred to be had

in vse as they haue ben byfore: & thou cõ
ceyllest all men therfore to refrayne them
selfe from suche recoueries hereafter.
¶ Doctour. Thou takest well that I ha-
ue sayde & accordynge as I haue mente it
¶ Studẽt. Now I pray the syth I haue
harde thy question of these recoueries ac-
cordynge to thy desyre that thou woldest
answere me to someperticuler questiõs cõ
cernynge tayled landes: wherof thou hast
at this tyme gyuen vs occasion to speke.
¶ Doctour. shewe me those questions: &
I wyll shewe the my mynde therein with
good wyll .¶.

☞ The fyrste question of the Student concernynge tayled landes. The .xxvii. Chapitre.

STudent. If a disseisour make a gyfte
in the tayle to Johan at style & Johã
at style for the redemyng of the title
of the disseisye agreeth with hym that he
shall haue a certayne rent out of the same
lande to him & to his heyres/ & for the suer
tye of that rent it is diuised that the disse-
isye shall release his right in the lande. &c.
& that suche a recouery as we haue spokẽ

of byfore shalbe had agaynste the sayd Johan at style to the vse of the payment of ye sayde rente and of the former tayle whether standeth that recouery well with cõscience or nat as thou thynkest. ¶ Doctor I suppose it dothe for it is made for the strengthe and suertye of the tayle whiche the disseyse might haue clerely defeated & auoyded if he wolde/ & therefore as I thinke if the sayde Johan at style had graunted to the disseyse onely by his dede a certayne rente for the releasinge of his title that graunte shulde haue bounde the heyres in the tayle for euer. And than if the disseyse for his more suertye wyll haue suche a recouerie as byfore appereth it semeth that that recouerye standeth with good conscience. ¶ Student. It semeth that thy oppynion is righte good in this matter. And so it appereth that with a reasonable cause some particuler recoueries maye stande bothe with lawe and cõscience to barre a tayle.

☞ The seconde question of the Student concernynge tayled landes .*.

The .xxviii. Chapitre.

Student. If a tenaunt in tayle suffre a recouery agaynste hym of the landes entayled to the entent that the recouerers shall stande seased therof to the vse of a certayne woman whome he entēdeth to take to his wyfe / for terme of her lyfe/ and after to the vse of the fyrste tayle: and after he maryeth the same woman / whether standeth that recouery with conscience though other recoueries vpon bargaynes and sales dyd nat. Doctoure. It semeth yes/for though the statute be / that they to whome the tenementes be so gyuē shulde nat haue power to aliene /but that the landes after theyr deth shulde remayne to theyr issues or reuert to the donours if the issues fayled: yet if he to whome the landes were so gyuen take a wyfe & dyeth seased without heyre of his body /and the donour entre the woman shall recouer agaynste hym the thyrde parte to holde in ye name of her dowre for terme of her lyfe though ye tayle be determined/ & the same law is of tenāt by ye curtesy: yt is to say of hi yt happeneth to marye one yt is an ēheritrix of ye lāde entayled: & they haue issue the wyfe dyeth & ye issue dyeth/ he shal holde the lādes for terme of his lyfe as tenāt

by the curtelye/ nat withstanding the wor
des of the statute whiche say that after ye
deth of the tenaunt in tayle without issue
the landes shall reuert to the donour/ & I
thynke the cause is bycause the intente of
that statute shall nat be taken that it inte
ded to put awaye suche titles as the lawe
shulde gyue by reason of the tayle/ & so it
semeth that a lyke entēt of the statute shal
be taken for ioyntours/ for els the statute
might be somtyme a lettynge of matrimo
ny/ & it is nat lyke that the statute inten-
ded so/ & therfore it semeth that by the one
ly deed of the tenaunt in tayle a ioyntour
may be made by the intent of the statute/
thoughe the wordes of the statute serue
nat expressely for it/ for many tymes the
intent of the letter shalbe taken & nat the
bare letter/ as it appereth in the same sta-
tute where it is sayd that he to whome ye
landes be gyuen shall haue no power to
alien/ yet the same statute is construed yt
neyther he nor his heyres of his body shal
haue no power to alyen/ & so me thynketh
that suche an intent shalbe taken here for
sauyng of ioyntours. ¶ Student. trouth
it is that somtyme the intent of a statute
shalbe taken ferther than the expresse let-

ter stretcheth/but yet there may no entent be taken agaynst the expresse wordes of ye statute/for that shulde be rather an interpretacion of the statute than an exposicō & it can nat be reasonably taken/ but that the intēt of the makers of the statute was that the lande shuld remayne continually in the heyres of the tayle as longe as the tayle endureth/& there can no ioyntour be made neyther by dede nor be recouerye/ but that the tayle must therby be discontinued/ & therfore this case of ioyntoure is not lyke to the sayd cases of tenant in dower or tenaūt by the courtesie/for the title of dowrye & of tenaunty by the curtesye groweth moste specially by the continuaūce of the possessiō in the heyres of the tayle but it is nat so of ioyntoures / & therfore by the onely dede of the tenaunte in tayle/ there maye no Joyntour be lawfully made agaynste the expresse wordes of the statute. And if there be any made by waye of recouerye/ than it semeth that it muste be put vnder the same rewle as other recouerues muste be of landes intayled.

The. xxix.

☞ The thyrde question of the Student/ concernynge tayled landes .*.

The.xxix. Chapitre.

STudent. If Johñ at noke beyng seased of landes in fee of his mere mociõ make a feoffement of a certayne landes to the intẽt that the feoffes shall therof make a gyfte to the sayde Johan at noke to haue to him and to his heyres of his body and they make the gyft accordinge. And after the sayd Johan at noke falleth in to dette/ wherefore he is taken & put in pryson /and therupon for payment of his dettes he selleth the same lande / and for suertye of the byer he sufferyth a recouerie to be had agaynst hym in suche maner as byfore appereth/whether standeth that recouerye with conscience or nat. ¶ Doctor I wolde here make a litell digression to aske the another question or that I made answere to thyne: that is to say to sele thy mynde howe that lawe by the whiche the body of the dettoure shalbe taken & caste in to pryson there to remayne tyll he haue payde the dette maye stande with conscience specially if he haue nothynge to paye it with/for as it semeth if he wyll relinquis-

she his goodes / whiche in some lawes is called in laten Cedere bonis that he shall nat be inprysoned/and that is to be vnderstande moste specially if he be fallen in to poucrtye and nat through his owne defaute. ¶ Student. There is no lawe in this realme that the defendaunt may in any case Cedere bonis/and as me semeth if there were suche a lawe it shulde nat be indifferent/ for as to the knowlege of hym that the money is owynge to the dettoure mighte Cedere bonis / that is to saye relinquisshe his goodes/and yet retayne to himselfe secretely greate ryches. And therefore that lawe in suche case semeth more indifferēt and rightouse that committeth suche a dettour to the conscience of the plaintyfe to whome the money is owynge thā that cōmitteth hym to the cōscience of hi that is the dettour/for in the dettour some defaute maye be assigned / but in hym to whome the money is owynge maye be assigned no defaut. ¶ Doctour. But if he to whome the dette is owinge/knoweth that the dettoure hath nothyng to pay the det with/& that he is fallē in to that poucrtie by some casualtie. And nat throughe his owne defaute/doth the lawe of Englande

holde that he maye with good conſcience kepe the dettour ſtyll in pryſon tyll he be payde. ¶ Student. nay verily: but it thinketh more reſonable to appoynt the libertie & the iugement of conſcience in that caſe to the dette than to the dettoure/for the cauſe byfore reherſed. And than the dette/ if he knowe the trouthe is as thou haſte ſayde bounde in conſcience to lett hym go at lybertie though he be nat compellable thereto by the lawe. And therfore admittynge it for this tyme/that the law of Englande in this poynt is good & iuſte. I pray the that thou wilte make anſwere to my queſtion. ¶ Doctour. I wyll with good wyll/& therfore as me ſemeth for as moch as it appereth that the ſayd gyft was made of the mere liberte & fre wyll of the ſaid Johan at noke/& without any recompēce that therefore it can nat be otherwyſe taken/but that the intent of the ſayde Johā at noke as well at the tyme of yᵉ ſayd feoffement / as at the tyme that he receyued agayne the ſayd gyfte in the tayle/was yᵗ if he happened afterwardes to falle in to poucrtie/that he might alyen the ſayd lāde to releue hym with/for howe may it be though that a man wyll ſo moche ponder

the welthe of his heyre / that he wyll forget hym selfe/ & so it semeth that nat onely the sayde recouerye standeth with conscience: but also that if he had made onely a feoffement of the lande that that feoffement shulde be in conscience a good barre of the tayle/ but if the sayd feoffement and gyfte had ben made in consideracio of any recompence of money or for any matrimony or suche other/ than the feoffemente of the sayd Johan at noke shulde nat bynde his heyre/ and if he than suffred any recouerye thereof: than that recouerye shulde be of lyke effecte as other recoueries whereof we haue treated byfore/ & the whiche I sayd it was good to fauour rather for theyr multitude than for the conscience: & the same lawe is that if the sonne and the heyre of the sayd Johan at noke in case yt the sayde gyfte was made without recompence alyen the lande for pouertye after the deth of his father that recouerye byndeth nat but as other recoueries do/ for it cā nat be thought that the entēt of the father was that any of his heyres in tayle shulde for any necessite disherite all other heyres in tayle that shuld come after hym but for hī selfe me thinketh it is resonable

to iuge in suche maner as I haue sayd byfore. ¶ Student. And though the intent of the sayde Iohan at noke whan he made the sayde feoffement/and whan he toke agayne the sayde gyfte in tayle: were that if he fell in nede that he mighte alien: yet I suppose that he maye nat alien though percase for the more suerte he declared his intent to be suche vpon the lyueries of season: for that intente was contrary to the gyfte that he frelye toke vpon hym: and whan any intent or condicion is declared or reserued agaynst the state that any mā maketh or acceptth: than suche an intēt or condicion is voyde by the lawe as by a case that hereafter folowth wyll appere/ that is to saye if a man make a feoffement in fee vpon condicīō that the feffe shall nat alien it to any man that condicīō is voyde for it is incidente to euery state of the fee simple that he that is so seased may alien. And lyke as in a fee simple there is incident a power to aliene / so in a state tayle there is a secrete intent vnderstande in the gyfte/that no alienacion shalbe made. And therefore thoughe the intente of the sayde Iohan at noke were that if he fell in to pouertie that he might sel: & though

he at the takynge of the gyfte openly declared his intente to be so /yet that intent shulde be voyde by the lawe as me semeth and if it be voyde by the lawe it is also voyde in conscience / and so the sayde recouery muste be taken in this case to be of the same effecte as recoueryes of other landes intayled be/ and in none other maner.

☞ The.iiii.question of the Student/ cõcernynge recoueryes of enheritaũce entayled. The.xxx. Chapitre.

STudent. If an annuite be graunted to a man to haue & to perceyue to the graunt and to the heyres of his body of the cofers of the grauntour. And after the graunte sufferyth a recouere agaynste hym in a writte of entre by the name of a rent in dale of lyke summe as the annuite is of with vouchers & iugemẽt after yᶜ cõmon course / & bothe parties intende that yt annuite shalbe recouered: whether shal that recouere binde the heyre i the tayle of his annuite. ¶ Docto². what if it were a rẽt goynge out of lãde of what effect shuld

the recouere be than. ¶ Student. It shuld be than of lyke effecte as it it were of lande. ¶ Doctoure. And so it semeth to be of this annuite/for as me thynketh a rēte & an annuite be of one effecte / for the one of them shalbe payde in redye money as the other shal. ¶ Studēt. That is trouth and yet there be many greate diuersities betwixte them in the lawe. ¶ Doctoure. I praye the shewe me some of tho diuersities. ¶ Student. Parte I shall shewe yᵉ/ but I wot nat whether I can shew the al but fyrste thou shalte vnderstāde that one diuersitie is this. Euery rente be it rente seruice/rente charge/or rēt seke/ is goyng out of lande/but an annuite goth nat out of any lande/ but chargeth onely the person: that is to saye the grauntoure or hys heyres that haue assez by discente / or the howse if it be graunted by a howse of a religion to perceyue of theyr cofers. Also of an annuyte there lyeth no accion but onely a writ of annuite agaynst the grāntour his heyres or successours/& that writ of annuite lyeth neuer agaynste the pernoure: but onely agaynste the grauntour or his heyres/ but of a rente the same accions maye lye as do of lande as the last

requyreth: & it lyeth somtyme of rente a-gaynste the tenaunte of the grounde/and somtyme agaynst the pernour of the rent/ that is to saye agaynste hym that taketh the rent wrongefully/& somtyme agaynst neyther: as of a rente seruyce assise maye lye for the lorde agaynste the mesne and a disseloure/or somtyme agaynste the mes ne onely if he dyd also the disseason. Also an annuite is neuer taken for an asses by-cause it is no freholde in the law/ne it shal nat be put in execucion ypō a statute mar chaunt / statute staple ne elegit as rente maye. And bycause the sayde writte of entre laye nat in this case of this annuite. And that it can nat be entēded in the law to be the same annuite/ though it be of ly-ke summe with the annuite: ne though ye parties assented and mente to haue the-same annuite recouered by the sayde writ-te of entre/therefore the sayde recouerie is voyde in lawe and conscience/but if suche a recouerie be had of rente with a vouchere ouer than it shalbe ta-ken to be of lyke effecte as re-coueries of landes be in suche maner as we ha ue treated of before.

The.xxxi.

☞ The.v.question of the Student/ concernynge tayled landes.

The.xxxi. Chapitre.

STudent. If landes be gyuen to a mā and to his wyfe in the name of his ioynrcourc by the father of the husbā de to haue and to holde to them and to ye heyres of theyr two bodyes begotten/and after they haue issue & the husbande dyeth and the wyfe alieneth the lande/& against the statute of.xi.H.vii.suffereth a recouc-rye thereof to be had agaynste her to the vse of the byer/and after her sone & heyre apparaunte/that is heyre to the tayle re-leaseth to the recouerers by fyne & dyeth hauynge a brother on lyue/and after the mother dyeth who hath righte to that lā de the byer or the brother of hym that re-leased. ¶ Doctourc. what is thyne oppi-nion therein/I praye the shewe me.

¶ Student. Me semeth that the byer hathe righte/for by the sayd statute made in the.xi.yere of kynge Henry the.vii.a-monge other thynges it is enacted that if any man/whiche hath landes of the gyft of her husbande/or of the gyfte of any of

the auncestours of the husbande / suffre any recouerye thereof agaynste her by couyne / that than suche recouerye shall be voyde / and that it shalbe lawfull to hym that shulde haue the lande after the dethe of the woman to entre and it to holde as in his fyrste right/prouided alwaye that that statute shall nat extende where he yt shulde haue the lande after the dethe of the woman is a greable to any suche alienacion or recouerye : so that / that agremente be of recorde. And for as moche as the heyre in this case agreed to the said recouerye by fyne / whiche is one of the hyest recordes in the lawe / it semeth that the byer hath right agaynste that heyre that agreed and agaynste all that shalbe heyres of the tayle/ and that nat onely by the sayde recouery / but also by the sayde statute whereby the sayde recouerye with assent of the heyre is affermed. ¶ Doctor. Though the byer in this case haue right during the lyfe of the heyre that released/ yet neuertheles after his dethe his heyre as it semeth maye lawfully entre / for the agremēt wherof the statute speketh must as I suppose eyther be had before the recouery/or els at ye tyme of ye recouery: for if

a title by reason of yᵉ sayd statute be ones deuolute to the heyre in the tayle/ than yᵗ right as it semeth can nat be extincte nor put awaye by the onely fyne of the heyre/ no more than if he had dyed and the nexte heyre to hym had released to the byer by fyne/in whiche case the release couldc nat extincte the righte of the tayle/nor the righte of entre that is gyuen by the statute/ & so as me semeth his nexte heyre maye therefore entre. ¶Student. As I perceyue all thy dowte is in this case bycause the assent of the heyre was after the recouerie/for if it haddc ben at the tyme of the recouerie as if the heyre had ben vouched to warrantye in the same recouerie and he had entered: and thereupon the Iugemente had be gyuen thou agreest well/yᵗ that recouerye shulde haue auoyded the tayle for euer. ¶Doctoure. That is true for it is in the expresse wordes of the statute/but whan the assente is after the recouerye/than me thynketh it is nat so/ nc yᵗ the right of the fyrste tayle/whiche was reuyed by the sayde statute shall nat be extincte by his fyne/no more than it shall in other tayles. ¶Student. I wyll be aduised vpon thy opinion in this mater/but

yet one thynge wolde I moue ferther vpō this statute and that is this. Some saye that by this statute all other recouerics that haue ben had/ouer and beside these recouerics of ioiitours be affermed/ for they say that syth the parliamēt at the makig of this statute/ knewe well that many other recouerics were than vsed and had to defete tayles and that it was lyke yᵗ they wolde so continue/ which neuertheles the parliament dyd nat prohibite for the time to come as it dyde the sayde recouerics of ioyntours: that it is therefore to suppose that they thought that they shulde stāde with lawe and conscīēce:but bycause ioiitours were made rather for the sauynge of the inheritaunce of the husbande/ than to destroy the inheritaunce/ they say that the parliament thought and adiuged the alienacions and recouerics of suche ioyntours to be agaynste the lawe and conscīēce and nat the alienacion of other landes entayled/for if they had they say/that the parliament wolde haue aduoyded recouerics of tayled landes generally aswell as it dyd of recouerics of ioyntoures.

¶ Doctoure. As to that opinion I wyll

answere the thus for this tyme / that
though that the makers of the sayde esta
tute onely put awaye recoueries of toyn-
toures/and nat other recoueries that yet
it can nat be taken therfore that theyr en
tent was that the other recoueries shulde
stande good and perfite/for they spake thā
onely of toyntours bycause there was no
complaynte made in the parliament at yᵗ
tyme/but agaynst recoueries had of toyn-
tours/and therfore it semeth that they in-
tended nothynge concernynge other reco
ueries:but that they shulde be of the same
effecte as they were byfore and no other-
wyse.And that will appere more playnly
thus/though the makers of the sayd esta-
tute entended to put awaye and adnull su
che recoueries as shulde be made of toyn-
tours after a certayne day limitted in the
statute/that yet they entended nat to ad-
uoyde ne afferme suche recoueries of toyn
tours as were passed byfore that tyme: &
if they intended nat to aduoyde ne affer-
me the recoueries had of toyntoures by-
fore that tyme:than howe can it be taken
that they intended to put awaye or affer-
me other recoueries that were passed by-

fore that tyme and nat of ioyntours/ that wolde nat affirme ne put awaye recoueries passed of ioyntoures byfore that time And so as it semeth they intended to spare the multitude of them that were passed of bothe and nat to comforte any to take them after that tyme. ¶ Student. I am contente thy oppinion stande for this tyme / and I wyll aske the another question.

☞ The.vi. question of the Student/ concernynge tayled landes. The.xxxii. Chapitre.

STudent. If tenaunt in tayle be disseased/ and dye and an auncestre collateral to the heyre in tayle release with a warrauntye and dye / and the warrãtye descendeth vpõ the heyre in the tayle/ whether is he thereby barred in conscience/ as he is in the law. ¶ Doctour. Bycause our principall intẽt at this tyme is to speke of recoueries and nat of warrãties: and also bycause it hath ben of longe tyme takẽ for a principall maxime of the law yᵗ it shuld be a barre to yᵉ heyre as well yᵗ claymeth

by a fee ſimple as by a ſtate tayly /and for that alſo that it was nat put away by the ſayde ſtatute of weſtminſter the.ii. which ordayned the tayle I wil nat at this time make the an anſwere therin/but will take a reſpite to be aduiſed. ¶ Student. Than I praye the yet or we departe ſhewe me what was the moſte principall cauſe that moued the to moue this queſtion of recoueries had of tayled landes. ¶ Doctour. This moued me thereto / I haue perceyued many tymes that there be many dyuers oppinions of thoſe recoueries: whether they ſtande with conſcience or nat / & that it is to dowte that many perſones rē in to offence of conſcience thereby. And therefore I thought to fele thy mynde in them whether I coulde perceyue that it were clere / that they ſerued to breke the tayle in lawe & conſcience/ or that it were clerely agaynſte conſcience ſo to breke the the tayle/or that it were a mater in dowt and if it appered a matter in dowte / or y^{t} it appered that the matter were vſed clerely agaynſte conſcience / than I thoughte to do ſomwhat to make the mater appere as it is to the intent: that they that haue

the rewle and the charge ouer the people as well the spirituall men as temporall men/shulde the rather endeuer them to se it reformed for the common welth of the people/as well in bodye as in soule. For whan any thynge is vsed to the displesure of god/it hurteth nat onelye the body but also the soule. And tẽporall rewlers haue nat onely cure of the bodyes/but also of the soules/and shall answere for them if they perysshe i theyr defaute: and bycause it semeth by the more apparaunt reason that the tayles be nat brokẽ ne fully auoyded by the sayd recoueries/& that yet neuertheles the great multitude of thẽ that be passed is righte moche to be pondered Therefore it were very good to prohibite them for tyme to come/to put awaye suche ambiguities and dowtes as ryse now by occasion of the sayde recoueries/and so they be but as snares to decreyue the people/and so wyll they be as longe as they be suffered to continue. And me thynketh verily that it were therfore right expediẽt that tayled landes shulde fromhensforthe eyther be made so stronge in the lawe that the tayle shulde nat be brokẽ by recouerie

fyne with proclamacion collaterall warrantye nor otherwyse/or els that all tayls shulde be made fee symple / so that euery man that liste to sell his lande mighte sell it by his bare feoffement and without any scriple or gruge of conscience: & thā there shulde nat be so great expenses in the law nor so great variaunce amonge the people: ne yet so greate offence of conscience as there is nowe in many persones.

¶ Student. Verily me thynketh that thy oppinion is righte good and charitable in this behalfe. And that the rewlers be boūde in conscience to loke well vpon it to se it reformed and broughte in to good ordre And verily by that thou haste sayde therein thou haste broughte me in to remembraunce that there be diuerse lyke snares concernynge spirituall matters suffred amonge the people/whereby I dowte that many spirituall rewlers be in greate offence agaynste god. As it is of that poynte that the spirituall men haue spoken so moche of that preestes shulde nat be putte to answere byfore laye men specially of felonies and murders/ and of the statute of xlb. E.iii.the.iii.chapitre/where it is said

that a prohibicion shall lye/where a mā is sued in the spirituall courte for tythe of wood/that is aboue the age of.xx.yere/by the name of Silua cedua as it hathe done byfore / and they haue in open Sermons and in diuerse other open communicacions and counsayles causes it to be openly notefied and knowen that they shulde be all accursed that put precestes to answere / or that mayntayne the sayd estatute / or any other lyke to it. And after whā they haue right well perceyued that nat withstandynge all that they haue done therein / it hath ben vsed in the same poites through all the realme in lyke maner as it was byfore. Than they haue sitte styll and lette the matter passe / and so whan they haue broughte many persones in greate daunger / but moste specially them that haue gyuen credence to theyr sayngе / and yet by reason of the olde custome haue wne as they dyd before/than there they haue lett thē/but verily it is to feare that there is to thē selfe right great offēce therby/ that is for to say to se so many i so great daunger as they say they be. And to do no more to bringe them out of it than they haue wne

for if it be trewe as they saye / they oughte to sticke to it with effecte in all charite till it were reformed. And if it be nat as they say thā they haue caused many to offende that haue gyuen credēce to them / and yet countrary to theyr owne conscience do as they dyd byfore / and that percase shulde nat haue offēded if suche sayinges had nat ben. And so it semeth that they haue i these matters done eyther to moch or to litel And I beseche all mighty god that some good man may so call vpon all these matters that we haue nowe cōmoned of / soy they that be in auctorite maye somwhat pondre them / & to ordre them in suche maner that offence of cōscience growe nat so lightly thereby hereafter as it hathe done in tyme paste. And verily he that on the crosse knewe the pryce of mānes soule wil hereafter aske a righte strayte accompt of rewlers for euery soule that is vnder them and that shall perysshe through theyr defaulte.

¶ Addition.

THus I haue shewed vnto the i this litle Dialoge howe the law of Eng-

lande is grounded vpō the lawe of reason the lawe of god/the generall customes of the realme/and vpon certayne principles that be called maximes vpon the particuler customes vsed in diuerse Cities & countries/and vpon statutes whiche haue ben made in diuerse parliamentes by our soueraygne lorde the kynge and his progenitoures/and by the lordes spirituall & temporall/& all the cōmons of the realme.
And I haue also shewed the in the.xx.chapitre of this boke/ vnder what maner the sayd generall customes & maximes of the lawe may be proued & affermed if they were denyed/& diuers other thynges be conteyned in this presente Dialoge/ whiche wyll appere in the table/ that is in the latter ende of the boke/as to the reders wyll appere. And in the ende of the sayd Dialoge I haue at thy desyre shewed the my cōceyte concernige recoueries of tayled landes/and thou haste vpon the sayde recoueries shewed me thyne oppinion. And I beseche our lorde sette them shortelye in a good clere way/ for surely it wyll be right expediente for the well ordrynge of conscience in many persones that they be so.

And thus god of peace and loue be alway with vs. Amen.

HEre endeth the fyrste Dialogue in Englisshe / with newe Additions betwixte a Doctoure of diuinite / and a Student in the lawes of Englande. And here after foloweth the Table .*.

¶ Tabula.

Here aft folowety the table with certayne Addicions newly added thereto. And ouer all the Chapitres and questions whiche be newly added: ye shall fynde entitled this worde (Addicion) bothe in the Table and also in the boke.

The introduccion. Fo. 2.

¶ Of the lawe eternall. The fyrst. chapitre. Fo. 3.

¶ Of the lawe of reason/ the whiche by Doctours is called the lawe of nature of reasonable creature. The. seconde. chapitre. Folio. 5.

Tabula.

¶ Of the lawe of god. The iii. chapitre. Folio. 7.

¶ Of the lawe of man. The. iiii. chapitre Folio. 9.

¶ Of the fyrste grounde of the law of Englande. The. v. chapitre. Fo. 11.

¶ Addicion. Fo. 12

¶ Of the seconde grounde of the lawe of Englande. The. vi. chapitre. Folio. 14.

¶ Of the thyrde grounde of the lawe of Englande. The. vii. chapitre. Folio. 16.

¶ Of the. iiii. grounde of the law of Englande. The. viii. chapitre. Fo. 21.

¶ Of diuerse cases/wherein the Student doweth whether they be onely maximes of the lawe/or that they be grounded vpō the lawe of reason. The. ix. chapitre. Folio. 25.

¶ Of the. v. grounde of the lawe of Englande. The. x. chapitre. Fo. 27.

¶ Of the. vi. grounde. of the lawe of Englande. The. xi. chapitre. Folio. 28.

¶ The fyrste question of the Doctoure/of the lawe of Englande and conscience. The. xii. chapitre. Fo. 29.

Tabula.

¶what Sinderisis is. The.xiii.chapitre Folio. 31.

¶Of reason. The.xiiii.cha. Fo.32.

¶Of cõscience. The.xv.cha. Fo.33.

¶what is Equite. The.xvi.chapitre. Folio. 36.

¶In what maner a man shalbe holpẽ by equities in the lawes of Englande. The.xvii.chapitre. Fo.38.

¶whether the statute hereafter rehersed by the Doctoure be agaynst conscience or nat. The.xviii.chapitre. Fo.41.

¶Of what lawe this question is to be vnderstande/ that is to saye where conscience shalbe rewled after the lawe. The.xix. chapitre. Fo.42.

¶Addicion. Fo.44.

¶Addicion. Fo.45.

¶Of diuerse cases/ where cõscience is to be ordered after the lawe. The.xx. chapitre. Fo.46.

¶Addicion. Fo.47.

¶The fyrste question of the Student. The.xxi.chapitre. Fo.49.

¶The seconde question of the Student. The.xxii.chapitre. Fo.50.

¶The thyrde question of the Student. The.xxiii.chapitre. Fo.51.

Tabula.

¶ The fourth question of the Student. The.xxiiii.chapitre. Fo.52

¶ The.v.question of the Student. The. xxv.chapitre. Fo.54.

¶ A question made by the Doctoure/how certayn recoueries that be vsed in the kinges courtes to defete tayled landes maye stande with cõsciẽce. The.xxvi.cha.fo. 55

¶ The fyrst questiõ of yᵉ studẽt/ cõcernig tayled lãdes. The.xxvii.chapi. Fo.65.

¶ The.ii.questiõ of the studẽt/ cõcernig tayled lãdes. The.xxviii.chapi. Fo.66.

¶ The thyrde question of the Student/ concernynge tayled landes. The.xxix. chapitre. Fo.68.

¶ The.iii.question of the Studẽt/ cõcernynge recoueries of enherit aũcestayled The.xxx.chapitre. Fo.70.

¶ The.v.question of the Studẽt/concernynge tayled landes. The.xxxi. chapitre. Folio. 72.

¶ The.vi.questiõ of yᵉ Studẽt/cõcernig tayled lãdes. The.xxxii.chapi. Fo.74.

Addicion. Fo.77.

¶ Finis Tabule.

¶ Thus endeth the fyrste Dialogue in Englisshe / with the Addicions bytwene a Doctoure of diuinitie and a Student in the lawes of Englãde which treateth of diuers thynges yᵗ be shortly touched in the fyrst lesse of thys present boke before the introduction.

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¶ Imprynted,

at Londõ in the Fletestrete / by me Robert Redman dwellynge in saint Dunstones parysshe / nexte the churche. In the yere of our lorde god. M.CCCCC. XXXu. The fyrst day of the moneth of July. .*.

Robert Redman.

¶ The seconde dyalogue in englysshe/ bytwene a doctour of diuynyte and a student in the lawes of Englande/ newly corrected and imprinted with newe addycions.

HEre after foloweth the Seconde dyaloge in englisshe bytwene a doctour of diuinite & a student in the lawe of Englãde. In the begynnynge of which dyalogue the doctour answereth to certayne questions/whiche the student made to the doctoure before the makynge of this dyalogue concernynge the lawes of Englande & conscience/ as appereth in a dyalogue made bytwene them in latin the 24. chap. And he answereth also to diuers other questions that the studẽt maketh to hym in thys dyaloge of the law of Englãde and conscience. And in diuers other chapiters of this present dyalogue is touched shortly/ howe the lawes of Englande are to be obserued & kepte in this realme / as to temporall thynges as well in lawe as in conscience before any other lawes. And in some of the chapitres therof is also touched that spirituall Juges in diuers cases be bounde to gyue theyr iugemẽtes accordynge to the kynges lawe. And in the later ende of the boke the doctoure moueth diuers cases concernynge the lawes of England/wherin he douteth howe they may stande with conscience/ wherunto the student maketh answere in suche maner as to the reder wyll appere.

¶ The introductyon.

STudent. In the later ende of our fyrste dyalogue i latyn/I put dyuers cases grounded vpon the lawes of Englãde/wherin I doutcd and yet do what is to be holden therin in conscyence. But for as moche as the tyme was than farre paste/ I shewed the that I wolde not desyre the to make answere to thẽ forthwith at that tyme/but at some better leyser: wherunto thou saydest thou woldest nat only shewe thyne opinyon in tho cases/but also in suche other cases as I wolde put. wherfore I pray the now(for as moche as me thinkethe thou haste good leyser) that thou wylte shewe me thyne opinyon therin.

¶ Doctour. I wyll with good wyll acomplysshe thy desyre: but I wolde that whan I am in doute what the lawe of this realme is in suche cases as thou shalte put/ that thou wylte shewe me what the lawe is therin: for though I haue by occasyon of our first dyalogue in latyn/lerned many

thiges of the lawes of this realme/which I knew nat before:yet neuertheleſſe there be many mo thynges that I am yet ignorant in/& that perauẽture in theſe ſelfe caſes that thou haſte put/and entendeſt here after to put:and as I ſayd in the firſt dyalogue in latyn/ the.xx.chapyter/ to ſerche conſcyence vpon any caſe of the lawe/it is in vayne/ but where the lawe in the ſame caſe is perfytely knowen. ¶Student. I wyll with good wyll do as thou ſayeſt/& I entende to put dyuers of the ſame queſtyons that be in the laſte chapytre of the ſayde dyalogue in latyn: and ſomtyme I entende to alter ſome of them and to adde ſome newe queſtyons to them/ ſuche as I ſhall be moſte in doute of. ¶Doctour. I pray the do as thou ſayeſt/& I ſhall with good wyll eyther make anſwere to them forthwith as well as I can/ or ſhall take lenger reſpyte to be aduyſed/ or els peraueuture agre to thyne opinyon therin/ as I ſhall ſe cauſe. But fyrſt I wolde gladly know the cauſe why thou haſt begon this dyalogue in the englyſſhe tonge/& nat in the latyn tõge/as the fyrſt caſes that thou deſyredeſt to knowe myne opinyon be in/ or in frenche as the ſubſtaunce of the lawe

is. ¶ Student. The cause is this. It is ryght necessary to all men in this realme/ bothe spirituall & temporall for the good orderige of theyr cõsciẽce to knowe many thynges of the lawe of Englande that they be ignorannt in. And thoughe it had ben more pleasaunt to them that be lerned in the latyne tonge to haue had it in latyne rather than in englysshe: yet neuertheleste for as moche as many can rede englysshe that vnderstãde no latyn/ & some that can nat rede englysshe: by herige it redde may lerne diuers thynges by it that they shulde nat haue lerned if it were in latyn. Therfore for the pfite of the multitude it is put into the englysshe tonge rather than into the latyn or frẽche tonge. For if it had ben in frenche: fewe shulde haue vnderstande it/but they that be lerned in the lawe/ and they haue leste nede of it/ for as moche as they knowe the law in the same cases wt-out it/ & can better declare what conscience wyll therupon/ than they that knowe nat the lawe nothige at all. To them therfore that be nat lerned ī the lawe of the realme this treatice is specially made/ for thou knowest well by suche studyes thou haste taken to some knowlege of the law of the

realme that is to them moste expedient.
¶ Doctoure. It is true that thou sayest: therfore I praye the nowe procede to thy questions.

¶ The fyrst question of the Student The fyrste chapitre.

STudent. If tenant in tayle after possibilitie of issue extincte do waste/whether dothe he therby offende in conscience thoughe he be nat punysshable of waste by the lawe. ¶ Doctoure. Is the lawe clere that he is nat punysshable for the waste? ¶ Studēt. ye verely. ¶ Doct. And what is the lawe of tenantes for tme of lyfe or for tme of yeres if they do waste. ¶ Student. They be punysshable of wast by the statute & shall yelde treble damag:/ but at the comon lawe before that statute they were nat punysshable. ¶ Doctour. But whether thynkest thou that before that statute they myght haue done waste with conscience because they were nat punysshable by the law? Studēt. I thynke nat/for as I take it: the doyng of the wast of suche particuler tenantes for terme of lyfe/ for terme of yeres / or of tenantes in

dower/or by the curtesye: is prohibite by the lawe of reason/for it semeth of reason that whan suche leases be made / or that suche tytles in dower or by the curtesy be gyuen by yᶜ lawe that there is onely gyuē vnto them the annuall pfites of the lande and nat the houses & trees & the grauel to dygge & cary away/wherby the hole pfite of them in the reuercion shulde be taken away for euer. And therfore at the comon lawe for waste done by tenant in dower or tenant by the curtesy there was punysshemēt ordeyned by the lawe by a phibicion of waste wherby they shulde haue yelded damages to the value of the waste. But agaynst tenant for terme of lyfe or for ūme of yeres lay no suche phibicion / for there was no maxime i the lawe therin agayust them as there was agaynste the other. And I thynke the cause was for as moche as it was iuged a folye in the lessour that made suche a lease for terme of lyfe / or for terme of yeres: that at the tyme of the lessee he dyd nat prohibite them that they shulde nat do waste/and sythe he dyd nat prouide no remedye for hym selfe: the lawe wolde none puide. But yet I thynke nat that the intent of the lawe was that

they myght lawfully & with good cõsciẽce do waste/but agaynst tenantes in dower & by the curtelye the lawe prouided remedy for they had theyr tytle by the lawe. Do. And verely me thynketh that this tenant in tayle as to doyng of waste/shuld be lyke to a tenaunt for terme of lyfe / for he shall haue the landẽ no lenger than for terme of his lyfe: no more thã a tenant for terme of lyfe shall / and the waste of this tenant is as great hurte to hym in the reuercion or remaynder/as is the waste of a tenant for terme of lyfe: and if he alyene/the donoure shall entre for the forfeyture as he shall vpon the alyenacion of a tenant for terme of lyfe/ and if he make defaute in a Precipe q̃ reddat: the donour shalbe receyued as he shalbe vpon the defaute of a tenaunt for terme of lyfe/and therfore me thynketh he shal also be punysshable of wast/as tenant for terme of lyfe shall. ¶ Student. If he alyen: the donour shal entre/as thou sayst bycause that alyenacion is to his disheritance/and therfore it is a forfeyture of his estate: and that is by an auncient maxime of the lawe that gyueth that forfeyture in that selfe case/ and if he make defaute in a Prec. q̃ redd̃: he in the reuercion/as thou

layest shalbe receyued / but that is by the statute of west. ii. for at the comon lawe ther was no suche receyt / and as for the statute that gyueth the accion of waste agaynst a tenant for terme of lyfe and for terme of yeres it is a statute penall & shall nat be taken by equite / & so there is no remedy gyuen agaynste hym / neyther by comon lawe nor by statute / as there is agaynste tenant for terme of lyfe / & therfore he is vnpunysshable of waste by the lawe.

¶ Doctour. And thoughe he be vnpunysshable of waste by the lawe: yet neuertheles me thynketh he maye nat by conscience do that / that shalbe hurtefull to the inheritaunce after his tyme / sythe he hathe the lande but for terme of his lyfe no more than a tenaunte for terme of lyfe may / for than he shulde do as he wolde nat be done to / for thou agreest thy selfe that thoughe a tenaunt for terme of lyfe was nat punysshable of wast before the statute that yet the lawe iuged nat that he myght ryghtfully & with good conscience do wast. And therfore at this day if a feffement be made to the vse af a man for terme of lyfe / thoughe there lye no accion agaynst hym for waste / yet he offendeth conscience if he

do waste as the tenaunte for terme of lyfe dydde afore the statute whan no remedye lay agaynste hym by the lawe. ¶ Stud. That is true / but there is great diuersite bytwene this tenant & a tenant for terme of lyfe: for this tenaunt hath good authorite by the donour to do waste / & so hathe nat the tenaunte for terme of lyfe / as it is sayd before. For the estate of a tenaunt in tayle after possibilite of yssue extynct is in this maner. whan landes be gyuen to a man & to his wyfe and to the heyres of theyr two bodyes begotten / and after the one of them dyeth without heyres of their bodyes begotten / than he or she that ouerlyueth / is called tenant in tayle after possibilite of yssue extynct / bycause there can neuer by no possibilite be any heyre that may inheryte by force of that gyfte. And thus it apereth yᵗ the dones at the tyme of the gyfte: receyued of the donour estate of enheritance / which by possibilite might haue continued for euer / wherby they had power to cut downe trees & to do all thige that is wast / as tenant i fee simple myght and that authorite was as stronge in the lawe as if the lessour that maketh a lease for terme of lyfe say by expresse wordes in

the lease that the lesse shall nat be punysshable of waste. And therfore if the donour in this case had graunted to the donces that they shulde nat be punisshable of wast that graunt had ben voyde bycause it was included in the gyfte before as it shulde be vpon a gyfte in fe simple: & so for as moch as by the fyrste gyfte and by the lyuere of seasen made vpon the same: the donces had authorite by the donour to do waste. Therfore though the one of the donces be nowe deed without yssue/ so that it is certayne that after the dethe of the other: the lande shall reuerte to the donour / yet the authorite that they had by the donour to do waste: cõtinueth as longe as the gyfte and the lyuerey of seasen made vpon the same cõtinueth: and I take this to be the reason why he shal nat haue in ayde as tenaunt for terme of lyfe shal/ that is to say/ for that he can nat aske helpe of that maxime/ wherby it is ordeyned that a tenant for terme of lyfe shall haue in ayde / for he can nat say but yᵗ he toke a greater estate by the lyuerey of seasen that was made to hym: whiche yet cõtinueth than for terme of lyfe/ & so I thynke hym nat bounde to make any restitucion to hym in the reuer-

cion in this case for the waste. ¶ Do. Is thy mynde onely to proue that thy tenant is nat bounde to make restitucion to hym in the reuercion for the waste: or that thou thynkest that he may with clere conscience do all maner of wast. ¶ Stud. I entende to proue no more but that he is nat boũde to restitucion to hym in the reuercion. ¶ Do. Than I wyll ryght well agree to thyn oppinion for the reason that thou haste made / but if thy mynde had ben to haue proued that he myght with clere conscience haue done all maner of waste: I wolde haue thought the contrary therto/ and that the tenant in fee simple may nat do all maner of waste & destruction with conscience/as to pull downe houses & make pastures of cyties & townes/or to do suche other actes whiche be agaynst the comon welthe. And therfore some wyll say that tenant in fee simple may nat with cõscience destroye his wodes & cole pyttes wherby a hole contrey for theyr money haue had fuell. And yet though he do so he is nat bounde by conscience to make restitucion to no person in certayne. But now I pray the or thou procede to the seconde case: that thou wylte somwhat shewe me what thou

meanest whan thou sayest: at the comon lawe it was thus or thus: I vnderstande nat fully what thou meanest by that ẏme at the comon lawe. ¶ Stud. I shall with good wyl shewe the what I mene therby.

¶ what is ment by this terme whan it is sayd/thus it was at the comon lawe.

The seconde chapitre.

STudent. The comon lawe is taken thre maner of ways. Fyrst it is taken as the law of this realme of Englãde discеyuered from all other lawes / & vnder this maner taken. It is oftentymes argued in the lawes of Englande what maters ought of ryght to be determined by the comon law/ & what by the admiralles courte or by the spirituall courte. And also if an obligacion bere date out of the realme/ as in Spayne/ Fraũce/ or suche other It is sayd in the lawe & trouthe it is that they be nat pledable at the comon lawe. Secondely the comon lawe is taken as the kynges courtes of his benche or of the comon place/ & it is so taken whan a ple is remoued out of auncien demeane for that the lande is franke fee and pledable at the comon lawe/ that is to saye in the kynges

courte & nat in ancien demcane. And vnder this maner taken/it is oftētymes pleaded also in base courtes as in court Barons/ the Contie & the court of Pypouders and suche other that this mater or that. &c. ought nat to be determined in that courte but at the comon lawe / that is to saye in the kynges courtes. &c. Thyrdely by the comon lawe is vnderstande suche thyngs as were lawe before any statute made in that point that is in question: so that/that poynt was holden for lawe by the general or particuler customes & maximes of the realme or by the lawe of reason & the lawe of god: no other lawe added to them by statute nor otherwyse/ as i the case before rehersed in the fyrste chapitre: where it is sayde that at the comon lawe tenante by the curtesy & tenant in dower were punysshable of waste/ that is to say/ that before any statute of waste made they were punysshable of waste by the grounde & maximes of the lawe vsed before the statute made in that pointe/ but tenant for terme yf lyfe ne for terme of yeres were nat punysshable by the sayde grounds & maximes tyll by the statute remedy was gyuen agaynste them: & therfore it is sayde that

at the comon law they were nat punysshable of waste. ¶Doc. I pray the now procede vnto the seconde question.

¶The seconde question of the student. The thyrde chapitre.

Student. If a man be outlawed & neuer had knowlege of ye sute/whether may the kynge take all his goodes & reteyne them in conscience as he maye by the lawe. ¶Docour. what is the reason why they be forfeyted by the lawe in that case. ¶Stud. The very reason is for that it is an olde custume & an olde maxime in the lawe: that he that is outlawed shall forfeyte his goodes to the kynge / and the cause why that maxime began was this. whā a mā had done a trespace to another or an other offence wherfore processe of outlagary laye / & he that the offence was done to had taken an accion agaynst hym accordyng to the lawe / if he had absented hym selfe and had had no lādes: there had ben no remedye agaynst hym: for after the lawe of Englāde no man shalbe condemned without aunswere / or that he appere and wyll nat answere/except it be by reason of any statute. Therfore for the punisshement of suche offenders as wolde nat

appeare to make answere & to be iustified in the kyngs courte/it hath ben vsed without tyme of mynde/that an attachemēt in that case shulde be directed agaynste hym returnable into the kynges benche or the comon place/and if it were returned there vpō that he had nought wherby he might be attached that than shulde go forthe a Capias to take his persone/ and after an alias Capias/ & than a Pluries: and if it were returned vpon euery of the sayd Capias that he coulde nat be founde and he appered nat: than shulde an Exigēt be dyrected agaynste hym whiche shulde haue so longe daye of returne/that fyue coūties myght be holden before the returne therof and in euery of the sayde fyue conties the defendant to be solemlye called: and if he appered nat/ than for his contumacy and disobedience of the lawe: the corroners to gyue iugement that he shalbe outlawed/ wherby he shall forfeyt his goodes to the kynge & lese diuers other aduantages in the law y nedeth nat here to be remēbred nowe. And so bycause he was in this case called accordynge to the lawe & appered nat: it semeth that the kyng hath good tytle to the goodes bothe in lawe & cōscience.

¶ Doctoure. If he had knowelege of the ſute in very dede it ſemeth the kynge hath good tytle in cõſcience as thou ſayeſt. But if he had no knowlege therof: it ſemethnat ſo/for the defaut that is aduuged in hi (as it appereth by thyne owne reaſon) is his contumacie and diſobedience of the lawe/ and if he were ignorant of the ſute/ than can there ben aſſigned in hym no diſobedience/for a diſobedience implieth a knowelege of that he ſhulde haue obeyed vnto.
¶ Student. It ſemeth i this caſe that he ſhulde be cõpelled to take knowlege of the ſute at his peryll/ for ſythe he hathe attẽpted to offẽde the lawe: it ſemeth reaſõ that he ſhalbe compelled to take hede what the lawe wyll do agaynſt hym for it / and nat onely that: but that he ſhulde rather offre amendes for his treſpaſſe than for to tary tyll he were ſued for it. And ſo it ſemeth the ignorauunce of the ſute is of his owne defaute/ ſpecially ſyth i the lawe is ſet ſuche ordre that euery man may knowe if he wyll what ſute is taken agaynſt hym/and may ſe the recordes therof whan he wyll/ & ſo it ſemeth that neyther the partye nor the lawe be nat bounden to gyue hym no knowlege therin. And ouer this I wolde

somwhat moue ferther in this mater thus That though the accio were vntrue/& the defendaũt nat gylthy/that yet the goodes be forfeyted to the kyng for his nat apparaũce in lawe & also in conscience/& that for this cause/the kyng as souereyne & hed of the lawe is boũden of iustice to graũt such writtes and such pcesses as be oppoynted in the lawe to euery plone that wyll complayne:be his surmyse true or false/& there vpon the kynge (of iustice) oweth as well to make proceſſe to bryng the defendaunt to answere whã he is nat gylty as whan he is gyltie/ & thã whã there is no maxime in the lawe that if a man be outlawed in suche maner as before appeth that he shall forfayte all his goodes to the kynge/& maketh no exceptiõ whether the accio be true or vntrue/it semeth that the sayd maxime more regardeth the generall ministracion of iustice: than the particuler ryght of the party: & that therfore the property by the outlawry & by the sayd maxime ordeyned for ministracion of iustice is altered and is gyuen to the kynge as byfore appereth/ & that both in lawe and cõscience as wel as if the accion were true. And than the ptie that is so outlawed is dryuen to sue for his

remedy agaynste hym that hath so caused hym to be outlawed vpon an vntrue accio ¶ Doct. If he haue nat sufficient to make recompence or dye before recouere can be had/what remedy is than. ¶ Student. I thynke no remedy/and for a ferther declaracion in this case and in suche other lyke cases where the propertie of goodes maye be altered without assēt of the owner: it is to cōsydre that the ppertie of goodz be nat gyuē to the owners directly by the law of reason nor by the lawe of god but by the lawe of man/& is suffred by the lawe of reason & by the law of god so to be. For at the begynnyng al goodz were in comō/but after they were brought by the lawe of man into a certeyne ppertie so that euery man myght knowe his owne: & thā whan such ppertie is gyuē by the law of mā the same lawe may assigne such cōdicios vpō the ppertie as it lysteth / so they be nat agaynst the lawe of god ne the lawe of reason / and may lawfully take away that it gyueth/ & appoynt howe longe the ppertie shall continue. And one cōdicio that goeth with euery ppertie i this realme: is if he that hathe the ppertie be outlawed accordyng to such proces as is ordeyned by the lawe/that he

shal forfayte the propertie vnto the kyng / and diuerse other cases there be also: wher by propertie in goods shalbe altered in the lawe and the ryght in landes also without assente of the owner / wherof I shall shortely touche some without laynge any authorite therin / for the more shortnes. Fyrst by a sale in open marked the propertie is altered. Also goodes stolen and seased for the kynge or weyued be forfaite oneles appelle or enditement be sued. Also strayes if they be proclaymed and be nat after clayned by the owner within the yere be forfayte / & also a deodand is forfayte to whome so euer the property was byfore / except it belonged to the kynge and shalbe disposed for the soule of hym that was slayne therwith: and a fyne with a nonclayme at the comõ lawe was a barre if claime were nat made within a yere as it is nowe by statute if the clayme be nat made withi. v. yeres. And al these forfaytures were ordeyned by the lawe vpon certayne considerations whiche I omit at this tyme / but certeyne it is that none of thẽ was made vpõ a better cõsideracion than this forfayture of outlagary was. For if no especiall punischemẽt shulde haue ben ordeyned for of-

fenders that wolde absent them selfe & nat appere whan they were sued in the kyngs courtes many sutes in the kinges courtes shulde haue ben of smale effecte. And sythe this maxime was ordeyned for the execucion of Justice and as moche done therin by the comon lawe as policie of mā coulde reasonably deuise to make the partie haue knowelege of the sute and nowe is added therto by the statute made the syxte yere of kynge Henry the. viii. that a writte of proclamacion shalbe sued if the partie be dwellynge in a nother shyre/it semeth that suche title as is gyuē to the kyng therby is good in cōsciēce/ especially seyng that the kyng is bounden to make processe vpon the surmyse of the playntyfe & may nat examine but by the ple of the partie whether the surmyse be true or nat. But if the partie be returned. v. tymes called where in dede he was neuer called as in the seconde case of the laste Chapitre of the sayd dialogue latyne is conteyned/ than it semeth the partie shall haue good remedy by petition to the kynge/specially if he that made the returne be nat sufficient to make recōpence or dye byfore recouery can be had. ¶ Doct. Nowe syth I haue herde thyne opinion in

this case wherby it appereth that many thyngs muste be sene or a ful and a playne declaracion can be made in this behalfe/ & seyng also that the plaine answere to this case shall gyue a great lyght to dyuerse other cases that may come by suche forfeyture. I pray the gyue me a ferther respyte or that I shewe the my ful opinion therin/ and here after I shall ryght gladly do it. And therfore I pray the procede nowe to some other case.

The thyrde question of the student. The fourth Chapitre.

STudent. If a straunger do waste in lãdes that a nother holdeth for terme of lyfe without assent of the tenaunt for terme of lyfe: wether may he in the reuercion recouer treble damages and the place wasted agaynste the tenaunt for terme of lyfe accordyng to the statute in conscience as he may by the lawe: if the straunger be nat sufficient to make recompence for the wast done. ¶ Doctoure. Is the lawe clere in this case that he in the reuercion shal recouer agaynst the tenaũt for terme of lyfe thoughe that he assented nat to the doyng

of the waſt. ¶ Student. ye verely/and yet if the tenaũt for terme of lyfe had ben boũden in an obligacion in a certeyne ſũme of money that he ſhulde do no waſte: he ſhuld nat forfayt his bõde by the waſt of a ſtraũger/and the diuerſite is this. It hathe ben vſed as an auncient maxime in the lawe that tenaunt by the curteſy and tenaũt in dower ſhuld take the lande with this charge/ that is to ſaye/ that they ſhulde do no waſte them ſelfe ne ſuffre none to be done/ and whan an accion of waſt was gyuen after agaynſt a tenaunt for terme of lyfe; thã was he taken to be in the ſame caſe as to that poynt of waſte as tenaunt by the curteſy and tenaunt in dower was/ that is to ſaye/ that he ſhulde do no waſte nor ſuffre none to be done/for there is a nother maxime in the lawe of Englande that all caſes lyke vnto other caſes ſhalbe iuged after the ſame lawe as the other caſes be & ſyth no reſõ of diuerſite can be aſſigned why thetenãt for terme of lyfe after an accio of waſt was gyuẽ agaynſt hi ſhuld haue any more fauour i the lawe thã the tenãt by the curteſie or tenaũt i dower ſhuld/therfore he is put vnd the ſame maxime as they be/that is to ſay/that he ſhall do no waſt ne ſuffre

none to be done / and so it semethe that the lawe in this case dothe nat considre the abilite of the persone that dothe the waste whether he be able to make recompēce for the wast or nat. But the assent of the sayd tenauntes wherby they haue wylfully taken vpon thē the charge to se that no wast shalbe done. ¶ Doctor. I haue herde that if houses of these tenauntes be destroyed with sodeyne tempest or with straunge enemies that they shall nat be charged with wast. ¶ Student. Trouthe it is. ¶ Doct. And I thynke the reason is bycause they can haue no recouere ouer. ¶ Student. I take nat that for the reason: but that it is an olde reasonable maxime i the lawe that they shuld be discharged i those cases/how be it some wyll saye that in those cases the lawe of reason doth discharge them & therfore they saye that if a statute were made that they shulde be charged in those cases of wast that the statute were agaynst reason and nat to be obserued/but yet neuertheles I take it nat so/for they myght refuse to take suche estate if they wolde / and if they wyll take the state after the lawe made: it semeth reasonable that they take it with the charge and with the condicion

that is appoynted therto by the lawe thou ghe hurte myght folowe to thē afterward therby/for it is oftentymes sene i the lawe that the lawe doth suffre him to haue hurt without helpe of the lawe that wyll wyl= fully renne into it of his owne acte nat cō= pelled therto and augeth it is folly so to renne into it/ for whiche folly he shall also be many tymes without remedy in consci ence. As if a man take landes for terme of lyfe and byndeth hym selfe by obligacion that he shall leue the lande in as good case as he founde it / if the houses be after blo= wē downe with tempest or destroyed with straunge enemies as in the case that thou hast put byfore he shalbe bouūde to repayre them or els he shall forfayte his obligaciō in lawe & conscience bycause it is his owne acte to bynde hī to it/& yet the lawe wolde nat haue bounde hym therto as thou hast sayd byfore. So me thīketh that the cause why the sayd tenauntes be discharged in the lawe in an accion of wast whā the hou ses be destroyed by sodeyne tempest or by straunge enemyes: is by a speciall reasona ble maxime in the lawe/wherby they be ex cepted fro the other generall bonde byfore reherced/that is to saye they shall at theyr

peryl se that no waste shalbe done and nat by the lawe of reason/and syth there is no maxime in this case to helpe this tenaunt ne that he can nat be holpē by the lawe of reason/it semeth that he shalbe charged in this case by his owne acte bothe in lawe & conscience whether the straunger be able to recompence hym or nat. ¶ Doctour. I doute in this case whether the maxime that thou spekest of be reasonable or nat / that is to say/that tenauntes by the curtesye & tenauntes in dower were bounden by the comon lawe lawe that they shulde do no waste them selfe/and ouer that at they? peryll to se that no waste shulde be done by none other. For that lawe semeth nat reasonable that byndeth a man to an impossibilite. And it is impossible to preuent that no wast shalbe done by straungers / for it may be sodeynly done in the nyght that the tenaūt? can haue no notice of / or by great power that they be nat able to resyste/and therfore me thinketh they ought nat to be charged in those cases for the waste/without they may haue good remedy ouer. and thā percase the sayd maxime were sufferable/& els my thynketh it is maxime agaīst reason. ¶ Studēt. As I haue sayd before

no man shalbe compelled to take that bōde vpon hym but he that wyll take the lande and if he wyll take the lande: it is reasō he take the charge as the lawe hath appoynted with it/and thā if any hurte growe to hym thereby: it is throughe his owne acte and his owne assent/for he myght haue refused the lease if he wolde. ¶ Doctoure. Though a man may refuse to take estate for terme of lyfe or for terme of yeres/ and a womā may refuse to take her dower: yet tenaūt by the curtesy can nat refuse to take his estate for immedeatly after the deth of his wyfe: the possession abideth styll i hym by the acte of the lawe without entre / and thā I put the case that after the deth of his wyfe he wolde weyue the possessiō & after waste were done by a straūger: whether thi kest thou that he shuld answere to the waste ¶ Stu. I thynke he shulde by the lawe. ¶ Doct. And howe stādeth that with reasō/seyng there is no defaut i hi. ¶ Stu. It was his defaut / & at his owne peryll that he wolde marye an enheritrice wherupon such daūger myght folowe. ¶ Doc. I put case that he were withi age at the mariage or that the lāde discēded to his wyfe aft he maried her. Stu. there thou moueste a ferd

doute than the fyrste question is/& though it were as thou sayst/yet thou cannest nat say but that there is as great defaut in hi as is in hym in the reuercion/& that there is as great reason why he shulde be charged with the waste as that he in the reuercion shulde be disherited and haue no maner remedy ne yet no profytte of the lande as the other hathe/ and thoughe he sayd maxime may be thought very streyt to the sayd tenauntes: yet is it for to be fauoured as moche as may be reasonably/ bycause it helpeth moche the comon welthe/ for it hurteth the comon welthe greately whan wodes and houses ben destroyed/ & if they shulde answere for no waste/ but for waste done by them selfe there myght be waste done by straungers by theyr cõmaũdemẽt or assent in suche colourable maner that they ī the reuercion shulde neuer haue pfe of theyr assent. ¶ Doctoure. I am cõtent thyne opinion stande for this tyme/ and I praye the nowe procede to a nother question.

¶ The fourth question of the student. The.v. Chapitre.

Student. If he that is the very heyre be certified by the ordinarie bastarde: and after bryng an accion as heyre a gaynste an other plone / whether may any man knowyng the trouthe be of counsayle with the tenaunt and plede the sayd certificate agaynst the demaundaunt by conscience or nat. ¶ Doctour. Is the lawe in this case that al other against whome the demaundaunt hathe tytle shall take aduãtage of this certificate as well as he at whose sute he is certified bastarde. ¶ Student. ye verely & that for two causes/ wherof the one is this. There is an old maxime in the lawe that a mischyfe shalbe rather suffred thã an inconuenièce/ & than in this case if a nother writte shuld afterwarde be sent to a nother bysshope i an other accion to certifie wether he were bastarde or nat/ peraduenture that bysshope wolde certifie that he were mulier/ that is to say lawfully begotten and than he shulde recouer as heyre/ and so he shulde in one selfe court be taken as mulier & bastarde/ for auoydynge of whiche contrariosyte: the lawe wyll suffre no mo writes to go forth in that case / and suffreth also all men to take aduauntage of that certificate rather thã to suffre

suche a contradiction in the courte whiche in the lawe called an inconuenīēce/ & the other cause is bycause this certificate of the bysshope is the hyest trial that is i the law i this behalfe. But this is nat vnderstāde but where bastardy is layde in one that is pty to the wryt / for if bastardy be layde in one that is estrāge to the writ as i a vouch pray en ayde or suche other/ than that bastardy shalbe tried by .xii. mē by which triall he i whome the bastardy is layde shall nat be cōcluded bycause he is nat priue to the trial & may haue no attait/ but he that is pty to the issue may haue attaint/ & therfore he shalbe cōcluded & none other but he & for as moche as the sayd maxime was ordeyned to eschewe an incōuenīēcy (as byfore appeth) it semeth that euery man lerned: may with cōscīēce plede the said certificate for auoydyng therof/ & gyue coūsaill therin to the pty accordyng vnto the lawe for els the sayd incōuenīēcy must nedely folowe. But yet neuerthcles I do nat meane therby that the party may after whan he hath barred the demaūdāt by the sayd certificate reteine the lande in cōscīēce by reason of the sayd certificate/ for though ther be no lawe to cōpel hym to restore it/ yet I

thynke well that in cõscience he is bounde to restore it/if he knowe that the demaundaũt is the very true heyre: wherof I haue put diuerse cases lyke in the.xvii. chapi. of our fyrst dialogue i latyn: but my entẽt is that a mã lerned i the lawe ĩ this case & other lyke may with cõsciẽce gyue his counsayle accordyuge to the lawe in auoydyng of such thyngs as the lawe thynke it shuld for a resonable cause be eschewed. ¶ Doc. Though he that doth nat know whether he be bastarde or nat may gyue his counsayle & also plede the sayd certificate: yet I thynke that he that doth knowe hym selfe tobe the very true heyre may nat plede it/ & that is for two causes. wherof the one is this. Euery man is bounde by the lawe of reason to do as he wolde be done to/ but I thynke that if he that pledeth that certificate were in lyke case: he wold thynke that no mã knowyng the sayd certificate to be vntrue myght with conscience plede it agaynst hi/wherfore no more may he plede it agaynst none other. The other cause is this/although the certificate be pleded: yet is the tenaunt boũden in conscience to make restitucion therof as thou hast sayd thy selfe/& thã in case that he wolde nat make

restitucion/than he that pleadeth the plee: shulde renne therby in lyke offence / for he hathe holpen to set the other man in suche a liberty thathe may chose whether he wil restore the lāde or nat/ and so he shulde put hym selfe to the ieoparty of a nother mannes conscience. And it is wryten Ecclesiasti.iii. Qui amat periculum: peribit in illo. That is/he that wylfully wyll put hi selfe in ieoparty to offende: shal perysshe therin/ and therfore it is the sureste way to eschew perylles/fro hym that knoweth that he is heyre: nat to plede it/ and as for the inconuenience that thou sayest must nedely folowe but the certificate be pleded: as to that it may be answered that it maye be pleded by some other that knoweth nat that he is very heyre / and if the case be so farre put that there is none other lerned there but he: than me thynketh that he shall rather suffre the sayd inconuenience than to hurt his owne conscience/for alwaye charite beginneth at him selfe & so euery man ought to suffre all other offences rather than he hym selfe shulde offende. And nowe that in this case I pray the procede to thou knowest myne opinion a nother question.

The.vi.Chapitre.

STudent.whether may a man with cō science be of counsayle with the playn tyfe in an accion of the comon lawe knowynge that the defendaunt hathe sufficient mater in conscience wherby he may be discharged by a Sub pena in the chaūcery whiche he can nat pleade at the comō lawe or nat. ¶ Doctoure. I praye the put a case therof in certeyne for els the questiō is very generall. ¶ Student. I wyll put the same case that thou puttest i our fyrste dialogue in latyne the.x.Chapitre.that is to say / if a man bounde in an obligacion/ pay the money & taketh none acquitaunce so that by the comon lawe he shalbe compelled to pay the money agyne for suche cō sideracion as appereth in the.xv. chapitre of the sayd dialogue where it is shewed cudently howe the lawe in that case is made vpon a good reasonable groūde moche necessary for all the people/howe be it that a man may somtyme throughe his owne defaut take hurte therby/ wherin I pray the shewe me thyne opinion ¶ Doctoure.this case semeth to be lyke to the case that thou haste put nexte byfore this / & that he that

knoweth the payment to be made doth nat as he wolde be done to if he gyue coũsayle that an accion shulde be taken to haue it payd agayne. ¶Sudent. If he be swoꝛne to gyue counsayle accoꝛdynge to the lawe as sergeauntes at the lawe be:it semeth he is bounde to gyue counsayle accoꝛdyng to the lawe/foꝛ els he shulde nat pfourme his othe. ¶Doctour. In those woꝛdes(accoꝛdyng to the lawe)is vnderstande the lawe of god and the lawe of reason: as well as the lawe & customes of the realme / foꝛ as thou hast said thy selfe i our fyꝛst dialogue in latyn that the lawe of god and the lawe of reason be two especiall groundes of the lawes of Englãd. wherfoꝛe as me thinketh he may gyue no coũsaile(sauing his othe) neyther agaynste the lawe of god noꝛ the lawe of reason/and certayne it is that this article that is to say / that a man shall do as he wolde done to:is groũded vpon both the sayd lawes. And fyꝛst that it is grounded vpon the lawe of reason: it is cuidẽt of it selfe. And in the.vi.Chap.of saynt Luke it is said. Et pꝛout vultis vt faciant vobis homines:et vos facite illis similiter. That is to saye / all that ye wyll that other men shulde do to you: do you to them/ & so it is

groũded vpon the lawe of god/wherfore: if he shulde gyue coũsayle agayne the defendaũt in that case: he shulde do agaynst both the sayd lawes. ¶Stu. If the defendaunt had none other remedy but at the comon lawe: I wolde agree well it were as thou sayest/but in this case he maye haue good remedy by a Sub pena/& this is the waye that shall induce hi directly to his Sub pena/that is to say/whã it appereth that the playntyfe shal recouer by the law. ¶Doc. Though the defẽdãt may be discharged by Sub pena/yet the bryngyng i of his pfes there wyll be to the charge of the defẽdãt/& also the pfes may dye or they come in. Also ther is a groũde i the lawe of reasõ/qđ nihil possim⁹ cõtra veritatem/that is/we may do nothig agaist the trouth/& syth he knowethe it is trouthe that the money is paid he may do nothig agaist the trouth & if he shuld be of cõsayle with the plaityf he must suppose & auerre that it is the verey due det of the plaityfe/& that the defẽdaũt withholdeth it fro hi vnlawfully/which he knoweth hi selfe to be vntrue/wherfore he may nat with cõscience i this case be of coũ sayle with the plaityfe/knowyng that the plaityf is paied al redy/wherfor if thou be

contented with this answere I praye the procede to some other question. ¶Stud. I wyll with good wyll.

The.viii.question of the student.

The.vii.Chapitre.

STudent. A man maketh a feoffement to the vse of hym and of his heyres/ & after the feoffour putteth in his beestes to manure the grounde and the feoffe taketh them as damages fesaunt and putteth them in pounde/and the feoffour bryngeth an accion of trespasse agaynste hym for entryng into his groundc.&c. whether may any man knowyng the sayd vse be of counsayle with the feoffe to auoyde that accion. ¶Doctour. Maye he by the comon lawe auoyde that accion seynge that the feoffour ought in conscience to haue the profytes. ¶Student. ye verely/for as to the comon lawe the hole interest is i the feoffe and if the feoffe wyll breke his conscience & take the profytes: the feoffour hath no remedy by the comon lawe: but is dryuen in that case to sue for his remedy by Sub pena for the profytes/and to cause hym to re feoffe him againe/and that was somtyme the moste comon case where the Sub pena was sued/that is to say/byfore the statute

of Rychard the thyrde but syth that statut the feoffour may lawfully make a feoffement. But neuertheles for the profytes receyued: the feoffour hathe yet no remedy but by Sub pena as he had byfore the said estatute. And so the suppoſell af this accio of treſpaſſe is vntrue in euery poynt as to the comon lawe. ¶ Doctoure. Thoughe the accion be vntrue as to the lawe: yet he that sueth it ought (in conſcience) to haue that he demaundeth by the accion/ that is to say/damages for the profytes/and as it semeth no man may with conſcience gyue counsayle agaynſte that he knoweth conſcience wolde haue done. ¶ Stu. Thouhe conſcience wolde he ſhulde haue the profytes/yet conſcience wyll that for the attaynning therof the feoffour ſhulde make an vntrue ſurmyſe. Therfore agaynſte that vntrue ſurmyſe euery man may with conſcience gyue his counsayle/ for in that doyng he reſyſteth nat the playntyfe to haue the profytes/but he withſtādeth hym that he ſhulde nat maintaine an vntrue accion for the profites. And it ſuffiſeth nat i the lawe ne yet in conſcience as me semethe that a man haue ryghte to that he sueth for / but that alſo he sue be a iuſt meanes/ and that

he haue bothe good ryght and also a good and a true cõueyaũce to come to his right for if a man haue ryght to landes as heyre to his father and he wyll bryng an accion as heyre to his mother that neuer had ryght/euery man may gyue cõũsayle agaiſt that accion thoughe he knowe he haue ryght by an other meanes/& ſo as me thynketh he may do in dilatoryes / wherby the partie may take hurte if it were nat pleaded/thoughe he knowe the plaintyfe haue ryght as if the ptie or the towne be miſnamed / or if the degrees in wryttes of entre be miſtaken/but if the partie ſhuld take no hurte by admittynge of a dilatorye there he that knoweth that the playntyfe hath ryght may nat pleade that dilatorie with conſcience as in a Forme done to pleade in abatement of the wrytte bycauſe he hathe nat made hym ſelfe heyre to hi that was laſt ſeaſed/or in a wryte of ryght for that the demaundaunt hath omitted one that tended right ne ſuche other/ne he may nat aſſent to the caſtyng of an Eſſoyne nor protection for hym if he knowe that the demãdaũt hathe ryght/ ne he maye nat vouche for him creepte it be that he knoweth that the tenaunt hathe a true cauſe of voucher

and of lyen / and that he doth it to bringe hym therto/ & in lykwyse he may nat pray in age for hym: oneles he knowe the praye haue good cause of voucher and lyen ouer/ or that he knowe that the pray hath somwhat to pleade that the tenaunt maye nat pleade as byllenage in the demaundaunte or suche other. ¶ Doctour. Thoughe the playntyfe hath brought an accion that is vntrue and nat mayntenable in the lawe/ yet the defendaunte dothe wronge to the playntyfe in the withholdynge of the profytes as wel byfore the accion brought as hangynge the accion/and that wronge as it semeth the cõsaylour doth mayntaine/ and also sheweth hym selfe to fauoure the partie in that wronge whan he gyueth cõcell agaynst the accion. ¶ Sudent. If the playntyfe do take that for a fauoure and a mayntenaũce of his wronge: he lugethe ferther than the cause is gyuen/so that the cõsaylour do no more but gyue cõsayle agaynst the accion/for though he gyue hĩ cõsayle to withstande the acciõ for the vntruth of it/ & that he shulde nat cõfesse it & to make therby a fine to the kyng without cause/yet it may stande with: that he may gyue counsayle to the partie to yelde the

profytes/and therfore I thinke he may in this case of counsayle with hym at the comon lawe and be agaynst hym in the chaũcery and in eyther courte gyue his coũsayl without any contrarioste or hurte of conscience / and vpon this grounde it is that a man may with good conscience be of coũsayle with hym that hath lande by discent or by a discontinuaũce withouten tytle / if he that hathe the ryght bryngenat his action accordynge to the lawe for the recouerynge of his ryght in that behalfe.

The seuenth question of the studente.

The.viii.Chapitre.

STudent. If a man take a distresse for dette vpon an obligaciõ or vpon a cõtracte or suche other thynge that he hath right title to haue:but that he ought nat by the lawe to distrayne for it/and neuertheles he kepeth the same distresse in pounde tyll he be payed of his dutye/what restitucion is he bounde to make in this case/whether shall he repay the money bycause he is come to it by an vnlawfull menes or onely to restore the partye for the wrongfull takyng of the distres or for ney

ther/I pray you shewe me. ¶ Doctoure. what is the lawe in this case. ¶ Student That he that is distrayned may bringe a special accion of trespasse agaynst hi that distreyned/for that he toke his beestz wrõg fully and kept them tyll he made a fyne/ & therfore he shal recouer that fyne in damages as he shal do for the residue of trespas for that takyng of the money by suche cõpulcion is taken in the lawe but as a fyne wrongfully taken/thoughe it be his ducte to haue it. ¶ Doctour. yet though he may so recouer: me thynketh that as to the repayment of the money he is nat bounde therto in cõscience so that he take no more thã of ryght he ought to haue/for though he come to it by an vniust meane/ yet whã the money is payed hym it is his of ryght and he is nat bounde to repaye it oneles it be recouered as thou sayd/and than whan he hathe repayed it he is as me thynkethe restored to his fyrst acciõ / but to the redelyuere of the beestes with suche damages suche hurte as he hathe by the distresse. I suppose he is bounde to make recompence of them in conscience without compulcion or sute in the lawe / for thoughe he myght lawfully haue sued for his ducte in suche

maner as the lawe hathe ordred / yet I agree well that he maye nat take vpon hym to be his owne iuge and to come to his duty agaynst the order of the lawe/and therfore if any hurte come to the partie by that disorder he is bounde to restore it. But I wolde thynke it were the more doute if a mā toke such a distresse for a trespasse done to hym and kepeth the distresse tyll amendes be made for the trespasse/for ī that cas the damages ben nat in certayne but be arbitrable eyther by assent of the parties or by.xii.men/and it semeth that there is no assēt of the partie in this case specially no fre assent/for that he dothe:is by compulcion and to haue his dystres agayne/ and so his assent is nat moche to be pondered in that case/for all is the assessynge of hi that toke the distresse/and so he hathe made hi selfe his owne iuge/and that is prohibited in all lawes/ but in that case where the distresse is takē for dette:he is nat his owne iuge/for the dette was iuged incertaine byfore by the fyrst contracte / & therfore some thynke great diuersite betwene the cases.

¶ Student. By that reason it semeth that if he that distrayneth in the fyrste case for the dette take any thynge for his damag

that he is bounde in conscience to restore it agayne/for damage be arbitrable and nat certayne no more than trespasse is/& me seme th that both in the case of trespasse and dette he is boũde in cõscience to restore that he taketh/for thoughe he ought in ryghte to haue lyke sume as he receyueth/ yet he ought nat to haue that money that he receyueth / for he came to that money by an vnmust meanes/ wherfor it semeth he ought to restore it agayne. ¶ Doctour. And if he shuld be cõpelled to restore it againe: shuld he nat yet (for that he receyued it ones) be barred of his fyrst action nat withstãdyng the repaymẽt. ¶ Stud. I wyll nat at this tyme clerely assoyle the that question / but this I wyll say that if any hurte come to hym therby: it is through his owne defaut for that he wolde do agaynst the lawe/but neuertheles a lytell I wyll say to thy questiõ/that as me semeth whã he hath repayed the money that he is restored to his fyrst actiõ. As if a mã cõdẽpned in an action of trespasse pay the money/& after the defendaũt reuers the iugement by a wrytte of errour and haue his money repayed/ than the playntyfe is restored to his fyrst actiõ. And therfore if he that i this case toke the

money: restored that he toke by the wrong full distresse: or that he ordred the mater so liberally that the other murmure nat nece playne nat at it / me semethe he dyd verey well to be sure in conscience: and therfore I wolde aduyse euery man to be wel ware howe he distrayneth in suche case agaynst the lawe. ¶ Doctoure. Thy counsayle is good / and I note moche in this case that the party may haue an accion of trespasse agayuste hym that distrayned so that he is taken in the lawe but as a wrong doer / and therfore to pay the money agaynes the sure way as thou hast sayd byfore. And I praye the nowe shewe me for what thynge a man maye lawfully distrayne as thou thynkest.

For what thyng a man may lawfully distrayne. The.ix.Chapitre.

STudent. A mā may lawfully distrayn for a rent seruice and for all maner of seruices / as homage / fealty / escuage / sute of court / reliefs and suche other. Also for a rent reserued vpon a gyfte in tayle / a lease for terme of lyfe / for yeres / or at wyl / if he reserue the reuercion: the feoffour shal

distrayne of comon ryght though there be no distresse spoken of. But in case a man make a feoffement & that in fee by indenture reseruyng a rent he shal nat distrayne for that rent oneles a distres be expressely reserued/and if the feoffemēt be made without dede reseruyng a rent that reseruacion is voyde in the lawe/ and he shall haue the rent onely in conscience and shal nat distrayne for it/& lyke lawe is where a gyfte in tayle or a lease for terme of lyfe is made the remaynder ouer in fee reseruyng a rent that reseruacion is voyd in the lawe. Also if a man sealed of landes for terme of lyfe graunteth away his hole estate reseruyng a rent/that reseruacion is voyd i the lawe without it be by endenture/& if it be by endenture: yet he shall nat distrayne for the rent but a distresse be reserued. Also for a merciamente in a leete the lorde shall distrayne. But for a merciament in a courte Baron he shal nat distrayne. Also if a man make a lease at Mighelmasse for a yere/ reseruynge a rent payable at the feaste of the Annunciacion of our Lady and sayut Michell the Archaungell / in that case he shal distrayne for the rent due at our Lady daye/but nat for the rent due at Mighel-

masse/bycause the terme is expired. But if a man make a lease at the feast of Christemasse for to endure to the feast of Christemasse next folowynge / that is to say for a yere reseruyng a rent at the aforsayd feast of the Annunciacion of our Lady & saynte Michel the Archaungell: there he shall distrayne for both the rentes as long as the terme continueth/that is to say tyll the aforsayd feast of Christemasse. ¶Also if a man haue lande for terme of lyfe of Johā at Noke / and maketh a lease for terme of yeres reseruynge a rente/ that rente is behynde/and Johan at Noke dieth/there he shal nat distrayne bycause his reuercion is determined. ¶Also if he to whosbse feffes ben seased maketh a lease for terme of yeres/or for terme of lyfe / or a gyfte in tayle reseruynge a rent/there the reseruacion is good and the lessour shall distrayne.

¶Also if a townechype be amerced & the neyghboures by assent assesseth a certaine summe vpon euery inhabitaunt/and agre that if it be nat payed by suche a day: that certayne persones therto assigned shall distrayne. In this case the distresse is lawful. If lorde and tenaūt be/and the tenaūt dothe holde of the lorde by fealtye & rent/ &

the lorde dothe graunt awaye the fealtie reseruynge the rent/and the tenaunt attorneth in this case / he that was lorde maye nat distrayne for the rent / for it is become a rent secke. But if a man make a gyfte in tayle to a nother reseruyng fealty and certayne rent/and after that he graunteth awaye the fealty reseruyng the rent and the reuercion to hym selfe/in this case he shall distrayne for the rent/for the graũte of the fealty is voyde/for the fealty can nat be seuered fro the reuercion. Also for heryot seruice the lorde shall distrayne and for heriot custome he shall cease and nat distrayne. Also if a rent be assigned to make a particion or assignemente of dower egall he or she to whome that rent is assigned maye distrayne and in all these cases aboue sayd where a man may distrayne he may nat distrayne in the nyght / but for damages fesaunt/that is to say/where beestes do hurt in his grounde he may distrayne in the nyght. Also for wastes/for reperacions/for accomptes/for dettes vpon contractes or suche other no mã may lawfully distrayne.

The.x.Chapitre.

The.viii.question of the student.

The.x.Chapitre.

STudent. If a man do a treſpaſſe and after make his executours and dye byfore any amendes made whether be his executours boũde in cõſcience to make amendes for the treſpaſſe if they haue ſufficient goodes therto though there be no remedy agaynſt them be the lawe to compel them to it. ¶ Doctour. It is no doute but they are bounde therto in cõſcience byfore any other dede in charite that they may do for hym of theyr owne deuocion. ¶ Stu. Than wolde I wete if the teſtatour made legacies by his wyll/whether the executores be boũd to do fyrſt/that is to ſay/to make amendes for the treſpaſſe or to paye the legacies/in caſe they haue no goodes to do bothe. ¶ Doctour. To pay legacies. For if they ſhulde fyrſt make recompẽce for the treſpaſſe / and than haue nat ſufficiente to pay the legacies: they ſhulde be taken i the lawe as waſters of theyr teſtatours goodes for they were nat compellable by no lawe to make amẽdes for the treſpaſſe by cauſe euery treſpas dyeth with the perſone/ but the legacies they ſhulde be cõpelled by the lawe ſpirituall to fulfyl/ and ſo they ſhulde

be compelled to paye the legacies of theyr owne goodes/and they shall nat be cõpelled therto by no lawe ne conscience / but if the case were that he leue sufficient goodes to do both: thã me thynketh they be boũde to do both/& that they be boũden to make amendes for the trespasse byfore they may do any other charitable dede for the testatoure of theyr owne mynde as I haue said byfore/excepte the funerall erpẽces that be necessary whiche muste be alowed byfore all other thynges. ¶ Student. And what the prouyng of the testament. ¶ Doctour. The ordinarie may nothyng take by conscience therfore/if there be nat sufficiẽt goodes besyde for the funeralles to pay the dettes and to make restitucion. And in lyke wyse the executours ben bounde to pay dettes vpon a simple contracte byfore any other dede of charite that they maye do for theyr testatoure of theyr owne deuocion thoughe they shal nat be compelled therto by the lawe. ¶ Studẽt. And whether thinkest thou that they be bounde to do fyrste/ that is to say/to make amends for the trespasse or to pay the dettes vpon a simple cõtracte. ¶ Doctoure. To pay the dettes for that is certayne and the trespas is arbitra

ble. ¶ Student. Than for the playner declaracion of this matter and other lyke I praye the, shewe me thy mynde by what lawe it is that a man maye make executours and that the executours if they take vpon them be bounde to perfourme the wyll and to dispose the goodz that remayne for the testatour. ¶ Doctour. I thynke that it is by the lawe of reason. ¶ Student. And me thynketh it shulde be rather by the custome of the realme. ¶ Doctour. In al cõtreys & in all landes they make executours ¶ Studẽt. That semeth to be rather by a generall custome after that the lawe and custome of propertie was brought in than by the lawe of reason / for as longe as all thynges were in comon: there were no executours ne wylles ne they neded nat thã/ and whan property was after brought in: me thynketh that yet makynge of executours & disposyng of goodz by wyll after a mãncs deth folowed nat necessarely there vpõ/for it myght haue ben made for a law that a man shulde haue had the ppertie of his goodz only duryng his lyfe/& that thã his dettes payed/all his goodz to haue ben lefte to his wyfe & clyldren or nexte of his kynne without any legacies makyng thes

of & so myght it nowe be ordeyned by statute/& the statut good & nat against reasō/ wherfor it appereth that executours haue no auctorite by the law of reasō but by the lawe of man. And by the olde lawe and custome of this realme a man may make executours and dispose his goodz by his wyl/ & than his executours shall haue the execucion therof & his heyres shal haue nothig/ but if any particuler customc helpe/ & the executours shall also haue the hole possessi on ad disposicion of all his goodes and catels/ as well reall as personal/thoughe no worde be expressely spoken in the wyl that they shall haue them/ and they shall haue also accions to recouer al dettes due to the testatour thoughe all dettes and legacies of the testatour by payed byfore/ and shall haue the disposicion of them to the vse of the testatour and nat to theyr owne vse/ & so me thynketh that the auctorite to make executours and that they shall dispose the goodes for the testatours by the custome of the realme. But than I thynke as thou sayest that by the lawe of god they shalbe bounde to doo that fyrste/ that is to the moste profite of the soule of theyr testatour where the disposicion therof is lefte to

theyr discrecion/and that I agre wel is to pay dettes vpon contractes and to make amendes for wrõges done to the testatour thoughe they be nat compelled therto by the lawe and custome of the realme if ther be none other dette nor legacie that they be bounde to paye by the lawe / but if two seuerall dettes be payable by the lawe:thã which dette they shall do fyrst in conscięce: I am somwhat in doute. ¶Doctour. Let vs fyrste knowe what the comon lawe is therin. ¶Student. The comon lawe is that if the testatoure owe.x.li. to two men seuerally by obligacion or by suche other maner that an accion lyeth agaynst his executours therof by the lawe/and he leueth goodes to pay the one and nat both / that in that case he that can fyrst optaine his iugement agaynst the executours shal haue execucion of the hole / and the other shall haue nothynge / but to whiche of them he shall in conscience owe his fauoure:the comon lawe treateth nat. ¶Doctour. Ther in muste be considered the cause why the dettes beganne/and than he muste after cõscience bere his lawfull fauoure to hi that hathe the clereste cause of dette/and if both haue lyke cause:than in cõscience he muste

bere his fauoure where is moste nede and greatest charite. ¶ Student. May the executours in that case delay that actiõ that is fyrst taken if it stande nat with so good conscience to be payed as a nother dette wherof no accion is brought and procure that an accion may be brought therof and than to confesse that accion/ that he maye so haue execucion/and thã the executours to be discharged agaynst the other.

¶ Doctour. why may he nat in that case pay the other without accion and so be discharged in the lawe agaynst the fyrste.

¶ Sudent. No verely for after an accion is taken the executoure maye nat ministre the goodes so/but that he leue so moch as shall pay the dette wherof the accion is taken/& if he do he shall paye it of his owne goodes/except a nother recouer and haue iugement agaynst hym hangynge that accion and that without couyn. ¶ Doctour. Thã to answere to thy question I thynke that by delayes that be lawfull as by Essoyne/ emperlaunce / or by a Dilatory plee in abatement of the wrytte that is true/he may delay it/but he may plede no vntrue ple to preferre the other to his duetie. But I pray the what is the lawe of legacies re

stitucions and dettes vpon cõtractes that pereasc ought rather after charite to be payed thã a dette vpon an obligacio what may the fauoure of the executoures do in those casces. ¶ Student. Nothynge for it they eyther perfourme legacies/make restitucions/or paye dettes vpon contractes & kepe nat sufficient to paye dettes whiche they are compellable by the lawe to paye / that shalbe taken as a deuastauerunt bona testatoris / that is to saye / that they haue wasted the goodes of theyr testatour and therfore they shalbe compelled to paye the dettes of theyr owne goodes/and so it is if they paye a dette vpon an obligacion wher of the day is yet to come thoughe it be the clerer dette & that it be the more charite to haue it payed. ¶ Doc. yet in that case if he to whome the dette is al redy owynge forbere tyl after the daye of the other obligacion is passe/than he may paye him without daunger. ¶ Student. That is true if there be no accion taken vpon it & though there be/yet if that accio may be delayd by lawfull meanes as thou hast spoken of by force: tyll after the day and than an accion is taken vpon it than may the executours confesse that accion and than after iuge-

ment he may paye the dette without daũ-
ger of the lawe. ¶ Doctour. Is nat that
confessyng of the accion so done of purpose
a couyn in the lawe. ¶ Student. No verely/
for couyn is where the acciõ is vntrue/
and nat where the executours bere a law-
full fauoure. ¶ Doctour. The ordinary vp
on the accompte in all the cases byfore re-
herced wyl regarde moche what is best for
the testatour. ¶ Studẽt. But he maye nat
dyrue them to accompte agaynst the order
of the comon lawe.

☙ The.ix.question of the student.

The.xi.Chapitre.

STudent. A mã is indetted to another
vpon a simple contracte in.xx.li. and
he maketh his wyll and byquetheth
xx.li.to Henry harte and dyeth and leueth
goodes to his executours onely to bury hĩ
with/and to perfourme the sayd legacie/ &
after the sayd executoures delyuer the goo
des of theyr testatour in perfourmaunce of
the sayd byquest/ whether is he to whome
the byquest is made: bounde in conscience
to paye the sayd dette vpon the simple con-
tracte to the sayd Henry harte or nat.
¶ Doct. Is he nat bounde therto by the

lawe. ¶ Student. No verely. ¶ Doctour And what thynkest thou he is in conscience ¶ Student. I thynke that he is nat boũde therto in conscience/for he is neyther ordinarie administratour/nor executour. And I haue nat herde that any man is bounde to pay dettes of any man that is deceassed/ but he be one of those thre/ for the goodes that the testatour lefte to the executoures were neuer charged with the dette/but the ylone of the testatour whyle he lyued was onely charged with the dette and nat his goodȝ/ & his executours that represent his estate after his deth hauynge goodes therto of the testatoures be charged also with the dettes and nat the goodes. And therfore if an executour gyue awaye or sell all the goodes of the testatoure or otherwyse waste them: he that hathe the goodȝ is nat charged with the dettes in lawe nor conscience/but the executours shalbe charged of theyr owne goodes / and in lyke wyse if Johan at Noke owe to A.B.xx.li. and A. B.oweth to C.D.xx.li.and after A.B.dyeth intestate hauynge none other goodes but the sayd.xx.li.whiche the sayd Johan at Noke oweth hi/yet the sayd C. D.shall haue no remedy agaynst the sayd Johan

at Noke/for he standeth nat charged to hi in lawe nor conscience. But the ordinarie in that case muste cõmitte administracion of the goodes of the sayd A.B. And the sayd administratour must leuy the money of the sayd Johan at Noke and paye it to the sayd C.D. And the sayd Johan at N. shall nat pay it hym selfe bycause he is nat chargeth therwith to hi / and no more me thynketh i this case that he to whome the byquest is made is neyther chargeth to hi that the money was owynge to i lawe nor conscience. ¶ Doctour. Than shewe me thy mynde by what lawe it is grouñded as thou thynkest that executores be bouñde to paye dettes byfore legacies/ whether is it by the lawe of god/ or by the lawe of resõ/ or by the lawe of man as thou thynkest. ¶ Studente. I thynke that it is both by the lawe of reasõ and by the lawe of god / for reason wyll that they shal do fyrst that is best for the testatour/and that is to pay dettes that his testatour is bounde to pay byfore legacies that he is nat bounde to. And also by the lawe of god they are bouñd to pay the dettes fyrste / for sythe they are bounden by the lawe of god to loue theyr neyghbourc/they are bounde to w for hym

that shall be best for hym whan they haue taken the charge therto/as executours do whan they agre to take the charge of the wyll of theyr testatour vpon them / and it is better for the testatour that his dettes be payed: wherfore his soule shal suffre paine: than that his legacies be yfourmed/ wherfore he shall suffre no payne for the nat yfourmynge of them. And that is to be vnderstande where the legacie is made of his owne fre wyl and nat where it is made as a satisfaccion of any dute. And after the sayenge of saynte Gregory/ the very true proffe of loue is the dede. But this man is nat i that case/for he neuer toke the charge vpon hym to paye the dettes of the testatour. And therfore he is nat bounde to the in lawe nor conscience as me semeth. But rather the executoures shulde haue bene ware or they had paied the legacies seyng there were dettes to paye. ¶ Doct. The executours might none otherwise haue done in this case but to pay the legacies for the they shulde haue ben compelled by the law to haue payed/and so they coulde nat haue bene to haue payed the dette vpon a contracte. And therfore they dyd well in per-

fourminge of the legacie/but he to whome the legacie was made ought nat to haue taken them/but ought in conscience to haue suffred them to haue gone to the payment of the dette/& sythe he dyd nat so but toke them where he had no ryght to them/it semeth that whan he toke them/he toke the with the charge in conscience to paye the dette/for syth the executours were compellable by the lawe to perfourme the byquest and nat to paye the dette / therfore whan they perfourmed that byqueste / they were discharged therby agaynste hym that the dette was owynge to in the lawe and conscience and than the charge rested vpon hi that toke the goodes where he ought nat in conscience to haue taken them / but if it had ben a dette vpon an obligacion or such other dette/wherupō remedy myght haue ben had agaynste the executoures by the lawe/there I suppose that thoughe the executoures had perfourmed the legacy that yet he to whome the legacye was made and perfourmed had nat bene charged in conscience to the payment of the dette/ for the executoures stode styll charged there to of theyr owne goodes / and he to whome that byqueste was made was

onely bounde in conſciende to repaye that he receyued to the executoures bycauſe he had no ryght to haue receiued it/for agaiſt the executours he had no ryght therto.
¶ Student. Than it ſemeth in this caſe that in lyke wyſe he to whome the bequeſt was made ſhulde repay that he receiued to the executours/and than they to pay it rather than he. ¶ Doctour. The executours haue no ferther medlynge with it as this caſe is/for whan they perfourmed the byqueſt they were diſcharged agaynſt bothe the other in lawe and conſcience / and alſo he to whome the byqueſte was made ſtode nat in this caſe charged to the executours/ for as agaynſte them he had good tytle by the lawe/and ſo this charge ſtandeth only agaynſte hym that the dette is owyng to/ and the ſame lawe that is in this caſe vpō a dette vpon a contracte is if the teſtatour had done a treſpaſſe whervpō he ought to haue made reſtitucion/that is to ſay/ that he to whome the byqueſt is made is boūde to make the amendes for the treſpaſſe / for it ſhulde be no diſcharge to hym to paye it agayne to the executoures without they payed it ouer/and it were vncertayne to hi whether they wolde paye it or nat. And

therfore to be out of peryll: it is necessarye that he paye it hym selfe/and than is he surely discharged agaynst all men.

The.x.question of the student. The.xii.Chapitre.

Student. A man seased of certayne lande in his demeane as of fee/ hathe issue two sones and dyeth seased/after whose dethe a straunger abateth/ & taketh the profytes/and after the eldest sone dieth without issue and his brother bringeth an assise of Mortdaũcestre as sone and heyre to his father nat makynge mencion of his brother and recouereth the lande with damages fro the deth of his father as he may wel by the lawe/whether i this case is the yonger brother bounde in cõscience to pay to the executours of the eldest brother the value of the profyts of the sayd lande that belonged to the eldest brother in his lyfe or nat. ¶Doctour. what is thyne opinion therin. ¶Student. That lyke as the said profytes belonged of right to the eldest brother in his lyfe/and that he had full auctorite to haue released as well the ryghte of the sayd lande as of the sayd profyts/whiche

releasé shulde haue ben a clere barre to the yonger brother for euer. That the ryght of the said damages whiche be in the lawe but a chatell / bylonge to his executours and nat to the heyre/for no maner of chatell neyther reall nor parsonall shall nat after the lawe of the realme discende vnto the heyre. ¶ Doctoure. Thou saydest in the case next byfore / that it is nat of the lawe of reason that a man shall may make executours/and dispose his goodes by his wyll/ and that the executoures shall haue the goodes to dispose but by the lawe of man / and if it be lefte to the termination of the lawe of man. Thā in suche cases as the lawe gyueth suche chatelles vnto the executours / they shall haue good ryghte vnto them/and in suche cases as the lawe takethe suche chatelles frome them: they bene ryghtfully taken frome them. And therfore it is thoughte by many that if a man sue a wrytte of ryghte of warde of a warde that he hathe by his owne fee and dyeth hangynge the wrytte/and his heyre sue a resomons accordynge to the statute of westmester seconde/and recouereth:that in that case the heyre shal enioye the wardeshype agaynste the executoures/ and yet it is but a chatel/and they take the reason

to be bycause of the sayd estatute / and so myghte it be ordeyned by statute that all wardes shulde go to the heyres and nat to the executoures. Kyght so i this case syth the lawe is suche that the yonger brother shall in this case haue an assyse of Mort dauncestre as heyre to his father: nat makynge any mencion of his elder brother & recouer damages as well i the tyme of his brother as in his owne tyme: it appereth that the lawe gyueth the right of these damages to the heyre/and therfore no recompence ought to be made to the executoures as me semeth / and it is nat lyke to a wryt of Ayel: where as I haue lerned i Latyn (syth our fyrste dialogue)the demaundaũt shall recouer damages onelyfro the deth of his father if he ouer lyue the Ayel/and the cause is for the demaũt though his Ayel ouer lyued his father must of necessite make his cõueyaũce by his father & muste make hi selfe sone & heyre to his father & cosyn & heyre to his Ayel / & therfore in that case if the father ouer liued the Ayel:the abatour were boũden in cõscience to restore to the executours of the father the profytes rẽne in his tyme/for no lawe taketh thẽ fro hĩ / but otherwyse is i this case as me semeth.

The.xii.Chapitre.

¶Student. If the yonger brother in this case had entred into the lande without takyng any assyse of Mort dauncestoure as he myght if he wolde / to whome were the abatour than bounden to make restitucō for those profytes as thou thynkest.

¶Doctour. To the executours of the eldest brother/for i that case there is no law that taketh them from them/ and therfore the general grounde whiche is that al chatels shall go to the executoures: holdeth in that case/but in this case that grounde is broken and holdeth nat for the reason that I haue made byfore/ for comonly there is no general grounde in the lawe so sure: but that it fayleth in some particuler case.

☙The.xi.question of the student. The.xiii.Chapitre.

STudent. A man seased of lande in fee taketh a wyfe / and after alieneth the lande and dyeth/after whose deth his wyfe asketh her dower and the aliene refuseth to assigne it vnto her/ but after she asketh her dower agayne and he assigneth it vnto her/whether is the aline in this case bounde in conscience to gyue the woman

damages for the profites of the land after her thyrde parte fro the dethe of her husbande/or fro the fyrst request of her dower or neyther the one nor the other. ¶Doct. what is the lawe in this case. ¶Student By the lawe the woman shall recouer no damagꝫ/ for at the comõ lawe the demaũdaunt i a wrytte of dower shulde neuer haue recouered damages. But by the statute of Marton yt is ordeyned that where the husband dyeth seased that the womã shall recouer damages whiche is vnderstande the profytes of the land sythe the dethe of her husband/& suche damagꝫ as she hathe by the forberynge of it/but in this case the husbande dyed not seased /where fore she shall recouer no damages by the lawe

¶Doctour. yet the lawe is that immediately after the dethe of her husbande the wyfe ought of ryght to haue her dower yf she aske it thoughe her husbande died not seased. ¶Student. That is trewe.

¶Doctoure. And sithe she ought to haue her dower fro the dethe of her husbande yt semeth that she ought in cõscience to haue also the profytes fro the dethe of her husbande though she haue no remedy to come to them by the lawe/for me thynketh that

that this case is lyke too a case that thou
puttest in our fyrste dyalogue in latyn the
xvii.chappytre. That if a tenaunte for terme of lyfe be dyssealed & dye / & the dissea-
sour dyeth / and his heyre entreth and ta-
keth the profytes / & after he in the reuer-
cyon recouereth the lād̄ against the hey-
re as he ought too do by the lawe / that in
that case he shall recouer no damages by
the lawe. And yet thou dydest agree that i
that case the heyre is bounde in concience
to pay the damages to the demaundaunt
& so me thynketh i this case that the feoffe
oughte in cōscyence to paye the damages
fro the deth of her husband seinge that im
mediately after his deth she ought too ha-
ue her dower. ¶ Student. Thoughe she
oughte too be endowed immediately after
the dethe of her husbande / yet she can lay
no defaute in the feoffe tyll she demaun-
de her dower vppon the grounde / and that
the tenaunte be not there too assigne it / or
if he be there that he wyl not assigne it / for
he that hath the possessyon of lande wher-
vnto any womā hath tytle of dower hath
good auctorytye as agaynste her to take
the pfytes tyll she requyre her dower for
euery womā that demaundeth dower af-

fermeth the possessyon of the tenaunt as agaynste her and therfore all thoughe she recouer it by accyō she leueth the reuercyon alwey in hym agaynst whome she recouereth thoughe he be a dysseasour & bryngeth nat the reuercyon by her recouery to hym that hath right as other tenauntes for terme of lyfe do. And for this reason it is that the tenaunte in a wrytte of dower where the husbande dyed seased if he appere the fyrst day may saye to exense hym selfe of damages that he is and all tymes hathe ben redy to yelde dower if it had ben demaunded/ & so he shall nat be receyued to do i a wryt of coslynage nether i the case that thou remembrest aboue/ for in bothe cases the tenauntes be supposed by the wrytte to be wronge doers/ but it is nat so in this case/ and so me thynketh it clere that the feoffe i this case shall nether be bounde by lawe nor conscience to yelde damages for the tyme that passed byfore the requeste/ but for the tyme after the requeste is greater doute/ howe be it some thynketh hym nat there bounde to yelde damages bycause his tytle is good as is sayd byfore and that it is her defaute that she brought nat her accyon. ¶ Doctour.

As vnto the tyme byfore the requeste I holde me contente with thyne opinion so that he assigne the dower whan he is required/but whan he refuseth to assigne it: than I thynke hym bounde in conscience to yelde damages for bothe tymes though he shall none recouer by the lawe. And fyrste as for the tyme after the refusell: it appereth euidentely that whan he denied to assigne her dower: he dyd agaynste conscīce/for he dyd nat that of ryght to haue done by the lawe/ne as he wolde shulde haue ben done to him/and so after the request he holdeth her dower fro her wrongfully & ought in conscience to yelde damages therfore. And as to the defaute that thou assignest in her that she toke nat her accīō/that forceth lytel for accīōs nede nat/but where the partie wyll nat do that he ought to do of ryght. And for that he ought of right to haue done and dyd it nat/he can take none aduauntage/and than as to the damages byfore the request me thynketh hym also bounden to paye thē/for whan he was requyred to assygne dower and refused. It appereth that he neuer intēded to yelde dower fro the begynnyng/ & so he is a wrongdoer in his owne cōscience/ and more ouer

if the husbande dye seased the lawe is such that if the tenaunt refuse to assigne dower whan he is requyred wherfore the womā bryngeth a wrytte of dower agaynst him/ that in that case the woman shall recouer damages as wel for the tyme byfore the request as after / and yet he ought nat i that case after thyne opinō to haue yelded any maner of damages if he had ben redy to assigne dower whan it was demaunded/and so me thynketh here. ¶ Studente. The cause in that case that thou hast put is for that the statute is general that the demaūdaūt shall recouer damages where the husbande dyed seased / and that statute hathe ben alwaye construed that where the tenaunt maye nat saye that he is and hathe ben alway redy to yelde dower.&c. that the demaundaunt shall recouer damages fro the dethe of her husbande. But in this case there is no law of the realme that helpeth for the demaundaūt neyther comon lawe nor statut/& forthermore though it myght be proued by his refusell that he neuer entended fro the deth of the husbande to assigne her dower yet that proueth nat / but that he had good ryght to take the pfites of her thyrde parte for the tyme as well as

he had of his owne two partes: tyl requeſt be made as is afore ſayd / and ſo me thynketh that nat withſtandyng the denyer he is nat bounde to yelde damagꝫ in this caſe but fro the tyme of the requeſt/and nat for the tyme byfore. ¶ Doctoure. For this tyme I am content with thy reaſon.

☙ The.xii.queſtion of the ſtudent. The.xiiii.Chapitre.

STudent. A mā ſeaſed of certayne landꝫ knowyng that an other hath good ryght and tytle to them leuieth a fyne with proclamacion to the entent he wolde extyncte the ryght of the other man/ & the other man maketh no clayme within the .v.yeres / whether may he that leuyed the fyne holde the lande in cōſcience as he may do by the lawe. ¶ Doctoure. By this queſtion it ſemeth that thou doſte agre that if he that leuyeth the fyne had no knowlege of the other mannes ryght: that his ryght ſhulde than be extyncted by the fyne in conſcience. ¶ Student. ye verely/for thou dydeſt ſhewe a reaſonable cauſe why it ſhulde be ſo in oure fyrſte dialogue in latyne the .xxiiii. Chapitre as there appereth. But if

he that leuyeth a fyne and that wolde extyncte the ryghte of an other/knowynge that the other hathe moze ryghte than he (than I doute therin) foz I take thyne opinion in our fyrste dialogue to be vnderstãde in conscience where he that wolde extincte fozmer ryghtes by suche a fyne with pzoclamaciõ knoweth nat of any fozmer tytle but foz his moze surety if any suche fozmer ryght be: he taketh the remedy that is ozdeyned by the lawe. ¶ Doctoure. whether dost thou meane in this case that thou puttest now that he that hath right: knoweth of the fyne and wylfully lette the the.v.yere pas without claime oz that he knoweth nat any thynge of the fyne. ¶ Student. I pzay the let me knowe thyne opinion in bothe cases and whether thou thinke that he that hathe ryght be barred in eyther of the cases by conscience as he is by the law oz nat. ¶ Doctour. I wyll with good wyl here after shewe me thy mynde therin/but at this tyme I pzaye the gyue a lytell sparyng and pzocede nowe foz this tyme to some other question.

The.xiii.question of the student.

The.xv.Chapitre.

The.xv.Chapitre.

Student. A man seased of certayne lan des in fee hath a doughter whiche is his heyre apparaũte/the doughter ta keth a husbande and they haue issue: the fa ther deyeth seased/ & the husbande as sone as he hereth of his deth goeth towarde the lande to take possession / and byfore he can come there: his wyfe dieth/whether ought he to haue the lande in cõscience for terme of his lyfe as tenaunt by the courtesie by= cause he hath done that in hym was to ha ue had possession in his wyues lyfe so that he myght haue ben tenaunt by the courte= sie accordynge to the lawe/ or that he shall neyther haue it by lawe nor conscience.

¶ Doctour. Is it clerely holdẽ in the law that he shall nat be tenaunt by the curtesy in this case bycause he had nat possession in dede. ¶ Student. ye verely/and yet vpõ a possessiciõ in lawe a womã shal haue her dower/ but no man shalbe tenaunte by the curtesie of lãde without his wyfe haue pos= session in dede. ¶ Doctoure. A man shalbe tenaunt by the curtesie of a rent thoughe his wyfe dye byfore the day of payment / & in lyke wyse of an aduowson thoughe she dye byfore the auoydaunce. ¶ Studente. That is trouthe / for the olde custome and

maxime of the lawe is that he shall be so / but of lande there is no maxime that seruyth hym but his wyfe haue possession in dede ¶ Doctour. And what is the reason that there is suche a maxime in the lawe of the rent and of the aduowson rather thā of lande/whan the husbāde wyth as moche as in hym is to haue possessiō and can nat ¶ Studēt. Some assigne the reason to be bycause it is impossible to haue possession in dede of the rent or of aduouson byfore the daye of payment of the rent / or byfore the auoydaunce of the aduouson. ¶ Doct. And so is impossible that he shal haue possession in dede of lande if his wyfe dye so sone that he maye nat by possibilitie come to the lande after her fathers dethe/and in her lyfe as this case is. ¶ Student. The lawe is suche as I haue shewed the byfore and I take the verey cause to be for that there is a maxime serueth for the rent and the aduouson/ and nat for the landes as I haue sayd byfore / and as it is sayd in the viii. chapitre of our fyrst dialogue/it is nat alwaye necessarie to assigne a reason or cōsideraciō why the maxymes of the lawe of Englande were fyrst ordeyned and admitted for maxymes/but it suffiseth that they

haue ben alwaye taken for lawe and that they be neyther cõtrarie to the lawe of reason nor to ths lawe of god as this maxime is nat/and therfore if the husbande in this case be nat holpen by cõscience he can nat be holpen by the lawe. ¶ Doctour. And if the lawe helpe hym nat: cõscience can nat helpe hym in this case/for conscience must alwaye be grounded vpon some lawe/ and it can nat in this case be groũded vpon the lawe of reason nor vpon the lawe of god/ for it is nat dyrectely by those lawes that a man shalbe tenaũt by the curtesy/but by the custome of the realme. And therfore if that custome helpe hi nat:he can nothyng haue in this case by conscience / for conscience neuer resysteth the lawe of mã nor addeth nothynge to it/but where the lawe of man is in it selfe dyrectly against the lawe of reason or els the lawe of god/ and than properly it can nat be called a lawe but a corruption / or where the generall groundes of the lawe of man worketh in any particuler case agaynste the sayd lawes as it may do/and yet the lawe good as it appereth in diuerse places in our fyrst dialogue in latyne/or els where there is no lawe of man prouided for hym that hathe ryghte

to a thynge by the lawe of reason or by the lawe of god. And than somtyme there is remedy gyuen to execute that in cõscience/ as by a Sub pena but nat in all cases / for somtyme it shalbe referred to the conscience of the partie/and vpon this grounde(that is to saye)that whan there is no tytle gyuen by the comon lawe: that there is no tytle by conscience. Therebe diuerse other cases whereof I shall put some for an example. As if a reuercion be graunted vn to one/but there is none attournement/ or if a newe rente be graunted by worde with out dede: there is no remedy by conscience oneles the sayd grauntes were made vpon considerations of money or suche other.
And in lyke wyse where he that is seased of landes in fee simple maketh a wyll ther of/the wyll is voyde in conscience bycause the grounde serueth nat for hym whereby the conscience shulde take effecte/that is to saye/the lawe/ and if the tenaunte make a feoffement of the lande that he holdeth by priorite and taketh estate agayne and dyeth(his heyre within age)the lorde of whome the lande was fyrst holden by priorite shall haue no remedy for the body by conscience / for the lawe that fyrste was with

hym/ is nowe agaynste hym/ and therfore cõsciẽce is altered in lyke wyse as the lawe altereth/ and diuerse and many cases lyke be in the lawe that were to long to rehearse nowe. And thus me thynketh that if the lawe be as thou sayest: the husbande in this case hathe neyther ryght by the lawe nor conscience.

The.xiiii.question of the student. The.xvi.Chapitre.

STudent. A rent is graunted to a man in fee to perceyue of two acres of land/ and after the graũtour enfeoffeth the grauntee of one of the sayd acres/ whether is the hole rente extincte therby in conscience as it is in the lawe. ¶ Doctour. Thy case is somwhat vncertayne/ for it appereth nat whether the grauntour enfeoffed hym on truste: or that he gaue the acre to hym of his mere motion to the vse of the sayd feoffe/ or els that the feoffement was made vpon a bargayne/ and if it were but onely a feoffement of truste/ than I thinke the hole rent abydeth in conscience though it be extincted in the lawe/ and fyrste that it continueth in that case in conscience/

for that parte that the grauntee hathe to the vse of the grauntour/it is euidente/for he may nat take the profytes of the lande/ and it is agaynste conscience that he shulde lese bothe/and in lyke wyse it abydeth i cõ science for the acre that remaynyeth in the handes of the grauntour thoughe it be ex= tyncte in the lawe/for there was a defaute in the grauntoure that he wolde make the feoffement to the grauntee as well as ther was in the grauntee to take it. And it is no conscience that of his owne defaute he shulde take so great auayle to be discharg= ged of the hole rent seynge that the feoffe= ment was made to his owne vse. And if the feoffemẽt were made vpon a bargayne and a contracte betwene them / than it is to se whether they remembred the rent in in theyr bargayne / or that they remẽbred it nat/ & if they remembred it in theyr bar= gayne and contracte/ than cõscience must folowe the bargaine/as thus if they agre= ed that the grauntee shulde haue the rent after the porcion in the other acre than by conscience he ought to haue it thoughe it be extincted i the lawe. And if they agreed that the hoole rente shulde be extyncte and made theyr pryce accordynge than it is ex

extincte in lawe and conscience / and if they clerely forgete it and made no mencion of it / or for lacke of connynge toke the lawe to be that it shulde continue in the other acre after the porcion and made theyr price accordynge / ponderynge onely the value of the acre that was solde: than me thynketh / it dothe continue in conscience after the porcion/and if the feoffement were made to the vse of the graũtee/ than it semeth the hole rente is extincte in lawe and conscience. ¶Student. Than take that to be the case/that is to saye/ that the feoffement was made to the vse of the graũtee. ¶Doctoure. what is than thyne opinion therin. ¶Student. That the rente shulde abyde in conscience after the porcion for the acre that remaynyth in the handes of the grauntoure notwithstandynge it be extincte in the lawe. ¶Doctoure. Than shewe me thyne opinion i this that I shall aske the. Of what lawe is it that grauntes of rent and of suche other profites out of landes maye be made and that they shal be good and effectual to the graũtees/whether is it by the lawe of reason or by the lawe of god or by the custome and lawe of the realme. ¶Studente. I

thinke it is by the lawe of reasō/for by the same reason that a man may gyue awaye all his landes: he maye as it semethe gyue awaye the profytes therof or graunte a rent out of the lande if he wyl. ¶ Doctour. But than by what lawe is it that a man maye gyue awaye his landes/ I trowe by none other lawe but by the custome of the realme / for by statute all alienacions and gyftes of landes maye be prohibite / and than that reason proueth nat that graun-tes of the pfytes of lande or of a rent shuld be good bycause he maye alien the lande/ if alienacions of lande be by custome and nat by the lawe of reasō as I suppose it is/ wherof I touched somwhat in our fyrste dialogue in latyne the.xix. Chapitre. And also if grauntes shulde haue theyr effecte by the lawe of reason: than reason wolde that they shulde be good by the onely word of the grauntoure as well as by his dede/ & that is nat so/for without dede the graunt of rent is voyde in the lawe and so my thin-keth that graūtes haue theyr effecte onely by the lawe of the realme. ¶ Studēt (Ad-myt it to be so) what meanest thou therby ¶ Doctour. I shal shewe the here after as

The.xvi.Chapitre.

I shall shewe the the cause why I thynke the rente is extyncte in conscience as well as in lawe. And fyrste as I take it the reason why it is extyncte in the lawe is bycause the rent by the fyrst graunt was goynge out of bothe acres/and was nat goyng parte out of the one acre and part out of the other/but the hole rent was goyng out of bothe/and than whan the graunter of his one foly wyll take estate in the one acre wherby that acre is discharged/ than the other acre also muste be discharged oncles it shulde be apporcioned and the law wyl nat that any apporcionemēt shulde be in that case/but rather in as moche as the partie hathe by his owne acte discharged the one acre: the lawe dischargeth also the other / rather than to suffre the other acre to be charged cōtrarie to the fourme of the graunte/for this rēt begynneth all by the acte of the party and as I haue herde is called a rēt agaynst comō ryght/wherfore it is nat fauored i the law as a rent service is/and than me thynketh that for as moch as it is nat groūded by the lawe of reason that grauntes of rent shulde be made out of lande/but by the custome and law of the realme as I haue sayd byfore / that so in

lyke wyse it remaynyth to the lawe and cu
stome of the realme to determine howe lõg
suche rentes shall continue. And whan the
lawe iugeth suche rentes to be voyde: I
suppose that so with conscience also/except
the iugement of the lawe be agaynste the
lawe of reason or the lawe of god / as it is
nat in this case for in this case he that ta-
keth the feoffement hath profite by the fe-
offement/and knoweth that he hath suche
a rent out of the lande / and that his pur-
chace shulde extynct it/wherby it appereth
that he assenteth vnto the lawe wherto he
was nat compelled / and that is his owne
acte and his owne defaut so to do / whiche
shall extyncte his hole rent as well in con-
sciente as in the lawe. But if he haue no p
fyte of the lande or be ignorannt that he
hathe suche a rent out of the lande whiche
is called ignorannce of the dede/or if he be
ignorañt that the lawe wolde extyncte his
hole rẽt therby/ which is called ignorañce
of the lawe/ than me thynkethe it remay-
neth in conscience after the porcion.

¶Student. Ignorannce of the lawe or of
the dede helpeth nat but in fewe cases i the
lawe of Englande. ¶Doctoure. And ther
fore it muste be reformed by conscience/

that is to say by the lawe of reasō/for whā the generall maximes of the lawe be ī any particuler cases against the lawe of reason as this maxime semeth to be bycause it excepteth nat thē that be ignorantes thoughe it be an ignorance invincible thā do they nat agree with the lawe of reason. ¶Student. Me thynketh that ignorance i this case helpeth lytell/for whan a man bythe any lande or taketh it of the gyfte of any other he taketh it at his peryl/so that if the tytle be nat good: ignorantce cā nat helpe/for the byer muste byware what he byeth/and so in this case if the takyng of the one acre shulde extincte the hole rent in conscience if he were nat ignorant/ so me thynketh it shulde in lyke wyse extincte it also thoughe he be ignorant of the lawe or of the dede/for euery man must be compelled to take notyce of his owne tytle: and out of what lande his rent is goynge/ ¶ so me thynketh ignorance is but lytell to be cōsidered in this case. ¶Doctour. If a man bye lāde or take it of the gyfte of an other: it is reason that he take it with the peryll though he be ignorant that a nother hath ryght/for it were nat standynge with reason that his ignorance shulde extincte

the ryght of a nother/ but in this case ther is no wute of the ryght of the lande/but al the doute is howe the rent shalbe ordred in conscience if he that hathe the rente take parte of the lande / and therin is great diuersite bytwene hym that is ignoraunt in the lawe/and him that knoweth the lawe/ and knowethe well also that he hathe a rent out of that land and other. For I put case that he asked counsayle of the grauntour hym selfe therin and he sayngc as he thought tolde hi y^t the takyng of the one acre shuld nat extynete the rent but for the portion: and so he thynkynge the lawe to be: toke the other acre of his gyfte. Is it nat reasonable in that case that that ignoraunce shulde saue the rent in conscience.
¶ Student. yes/for there the grauntour hym selfe is partie to his ignoraunce and is in maner the cause therof. ¶ Doctour. And me thynkethe all is one if any other had shewed hym so / or if he had asked no counsayle at all / for me thynkethe it suffiseth in this case that he be ignoraũt of the lawe/for why / it is more harde in this cas to proue that the rent shulde be extynete in conscience thoughe he knowe it shalbe extyncted in the lawe: than to proue that it

continueth in conſcience after the poꝛcion if he be ignoꝛãt/& thou thy ſelf were of the ſame opinion/as it appereth in the begynnynge of this preſent Chapitre/but if that opinion were true:it wolde be hard to pue but that the ſayd generall maxime were holly agaynſte reaſon/& thã it were voyd/ but I haue ſufficiently anſwered therto as me ſemethe/ and that it is extynct in the lawe and alſo in conſcience/ except ignoraunce helpe it to be appoꝛcioned. And moꝛe ouer foꝛ as moch as appoꝛcionemẽt is ſuffred in the lawe where pte of the land diſcendeth to the grauntee bycauſe no defaute can be aſſigned in hym/ ſo me thynketh no defaute can be aſſigned in hym in conſcience whã he is ignoꝛaũt of the lawe oꝛ of the dede thoughe ſuche ignoꝛaũce do nat excuſe in the lawe of the realme.

¶Student. I am contente with thyne opinion in this behalfe at this tyme.

¶The.xv.queſtion of the ſtudent. The.xvii.Chapitre.

Student. A mã graũteth a rẽt charge out of two acres of lande/ and after the grauntour enfeoffeth Henry hert

in one of the sayd two acres to the vse of the sayd Henry herte and of his heyres / & after the sayd Henry herte entendynge to extynete all the rent causeth the sayd acre to be recouered agaynste hym to his owne vse in a wryt of entre in the post in the name of the grauntee and of other after the comon course/the grauntee nat knowyng of it/and by force of the sayd recouere the other demaundaũtes entre and dye/lyuyng the grauntee/so that the graũtee is seased of al by the surueiour to the vse of the sayd Henry herte/ whether is the sayd rent extynete in conscience in parte nor in all or in no parte. ¶ Doctour. I am in doute of the lawe in this case. ¶ Student. In what poynt. ¶ Doctoure whether the hole rent be goynge out of the acre that remayneth in the handes of the graũtour bycause the grauntee cometh to the lande by waye of recouere / or that it shalbe extynete in the law/but after the porciõ bycause the graũtee hathe nat the acre to his owne vse / or that the hole rẽt shalbe extincte i the lawe. ¶ Student. The rent can nat be hoole goynge out of the acre that the grauntoure hathe / for this recouere is vpon a fayned tytle/& the graũtour bycause he is straũge

to it: shalbe well receyued to falsifie it.
But if the recouerye had ben vpon a true tytle: than it had ben as thou sayest / for if the grauntee recouer the one acre agaynst the grauntour vpon a true tytle/ the graũtour shall pay the hole rent out of that lãde that remayneth in his hãde/ and as to the vse it maketh no mater to the grauntoure as to the lawe in whome the vse be/ for the possession without the vse extynguysheth the hole rent as agaynst hym in the lawe as well as if the possession & vse were both ioyned to gether in the grauntee. ¶ Doct. Than me thynketh that the sayd Henry herte is bounden in conscience to paye the graũtee the rent after the porcion of that acre that was recouered/ for it cã nat stãde with conscience that he shulde lose his rent and haue no profites of the lande. ¶ Student. Than of whome shall he haue the other porcion of his rente. ¶ Doctour. Is the lawe clere that the acre that the graun tour hath shalbe in this case discharged in the lawe. ¶ Student. I take the lawe so. ¶ Doctour. And what in conscience.
¶ Student. As agaynste the grauntoure me thynketh / also it is extynct in conscience for the reason that thou hast made in

the.xvi.Chapitre/for it is all one in conscience in this case as agaynst the graũtour whether the recouere were to the vse of the grauntee or nat/especially seynge that the grauntoure is nat priuey to the recouery/for the vnite of possession is the cause of extinguisshemẽt of the rent against the graũtoure bothe in lawe and conscience where so euer the vse be/but if the grauntour haben priuey to the cause of the extynguisshement as he was in the case that I put in the laste Chapitre where the grauntoure enfeoffed the grauntee of one of the acres to the vse of the grauntee there it is nat extyncte in conscience in that acre that remaynyth in the handes of the grauntoure thoughe it be extynctẽ i the lawe/bycause he was priuey to the extynguisshement hi selfe/but he is nat so in this case/and therfore it is extynete agaynst hym i lawe and conscience. And therfore me thynkethe that the grauntee shall in conscience haue the hoole rente of the sayd Henry herte that caused the sayd recouere to be had in his name/for in hym was all the defaute/but it is to be vnderstande that in all the cases where it is sayd byfore in this Chapitre or in the Chapitre nexte byfore:

that the rent is extincte in the lawe & nat in conscience that in suche case all the remedies that the partie myght fyrste haue had for the rent at the comon lawe by distres assyse or otherwyse are determined / and the partie that ought to haue the rent in cõscience shalbe dryuen to sue for his remedy by Sub pena. ¶ Doctour. I am cõtent with thy conceyte in this matter for this tyme.

The.xvi.question of the student. The.xviii.Chapitre.

STudent. A vylleyne is graunted to a mã for terme of lyfe/ the vylleyne purchaseth landes to hym and to his heyres/the tenaunt for terme of lyfe entrethe/ in this case by the lawe he shall enioye the landes to hym and to his heyres/whether shall he do so in lyke wyse in conscience. ¶ Doctour. Me thynketh it fyrst good to se whether it maye stande with conscience that one man may clayme an other to be his vylleyne/ and that he maye take fro hi his landes and goodes and put his body in pryso̅ if he wyll/it semeth he loueth nat his neyghbour as hym selfe that dothe so

to hym. ¶ Sudent. That lawe hathe bene so longe vsed in this realme and in other also/and hath ben admitted so long in the lawes of this realme and of diuerse other lawes also and hath bene affermed by bis=shoppes/abbotes/priors/ and many other men bothe spirituall and tempozall which haue take aduauntage by the sayd lawe & haue seased the landes and goodz of theyr vylleyns therby and cal it theyr ryght en=heritaunce so to do: that I thynke it nat good/nowe to make a doute ne to put it in argument whether it stand with conscièce oz nat/and therfore I pray the admittyng the lawe in that behalfe to stande in consci ence shewe me thyne opinion in the questi on that I haue made. ¶ Doctour. Is the lawe clere that he that hath the vylleyne but only foz the terme of lyfe shal haue the landes yt the vylleyne purchaseth in fee to hym and to his heyres. ¶ Student. I ve=rely I take it so. ¶ Doctour. I wolde haue take the lawe otherwise/foz if a seygnoury be graunted to a man foz terme of lyfe and the tenaunt attourne / and after the lande eschete and the tenaũt foz terme of lyfe en=treth he shal haue there none other estate i the lande than he had in the seygnourye /

and me thynketh that it ſhuld be lyke law in this caſe/and that the lorde ought to haue in the lande but ſuche eſtate as he hathe in the vyllayne. ¶ Stud. The caſes be nat lyke / for in that caſe of the eſchete the tenaunt for terme of lyfe of the ſeygnourye hathe the landes in the lieu of the ſeignourie/that is to ſaye/ in the place of the ſeignourie/& the ſeignourie is clerely extincte/ but in this caſe he hathe nat the lande i the lieu of the vylleyne/for he ſhal haue the villeyne ſtyl as he had byfore/but he hath the landes as a pfyte come by meanes of the vylleyne whiche he ſhall haue in lyke caſe as the vylleyne had them / that is to ſaye/ of all goodes and catalles he ſhal haue the hole proprtie and of a leaſe for terme of yeres he ſhall haue the hole terme / and for terme of lyfe he ſhall haue the ſame eſtate/ the lorde ſhall haue the lande durynge the lyfe of the vyleyne & of lande in fee ſimple & of an eſtate tayle that the vylleyne hath/ the lorde ſhall haue the hole fee ſimple/all thoughe he had the vylleyne but onely for terme of yeres ſo that he entre or ſeaſe accordyng to the lawe byfore the vylleyne alien: or elles he ſhall haue nothynge.

¶ Doctour. Verely and if the lawe be ſo/ I thynke conſcience folowethe the lawe

therin / for admyttynge that a man maye with conscience haue an other man to be his bylleyne / the iugement of the lawe in this case as to termine what estat the lord hath in the lande by his entre is neyther a gaynst the lawe of reason nor agaynst the lawe of god/and therfore conscience muste folowe the lawe of the realme/but I praye the let me make a lytell dygression to here thyne opinion in a nother case somewhat perteynynge to the question/and it is this if an executour haue a bylleyne that is his testatoure had for terme of yeres & he purchaseth landes in fee and the executour entreth in to the lande/ what estate hathe he by his entre. ¶ Student. A fee simple/ but that shalbe to the behoue of the testatoure and shalbe an assette in his handes.
¶ Doctoure. well than I am contented with thyne conceyte at this tyme in this case and I praye the procede to a nother question. ¶ Student. For as moche as it appereth in this case and in some other byfore yᵗ yᵉ knowlege of the law of Englãde is ryght necessarie for the good orderynge of conscience. I wolde here thyne opinion if a man mistake the lawe what daũger it is in conscience for the mistakynge of it.

The.xix.Chapitre.

¶ Doctour. I praye the put some case in certayn therof that thou doutest in/and I wyll with good wyll shewe the my mynde therin for elles it wyll be somwhat longe or it can be playnly declared/and I wolde nat be tedious in this wrytynge.

The.xviii.question of the student.
The.xix. Chapitre.

STudent. A man hath a vylleyne for terme of lyfe the vylleyne purchaseth landes in fee as in the case in the laste Chapitre and the tenaũt for terme of lyfe entreth and after the vylleyne dyeth/he in the reuercion pretendynge that the tenaũt for terme of lyfe hath nothyng in the land but for terme of lyfe of the vylleine/asketh counsayle of one that sheweth him that he hath good ryght to the lande and that he may lawfully entre/and throughe that cou̇nsayle he in the reuercion entreth/by reason of the whiche entre great sutes and expences folowe in the lawe to the great hurte of bothe parties/ what daunger is this to hym that gaue the counsayle. ¶ Doctour. whether meanest thou that he that gaue the counsayle gaue it wyttyngly agaynste

the lawe/or that he was ignorant of the lawe. ¶ Student. That he was ignorãt of the lawe for if he knewe the lawe & gaue counsayle to the contrarie I thynke hym bounde to restitucion both to hym against whome he gaue the counsayle/ and also to his client if he wolde nat haue sued but for his counsayle of all that they be dampnified by it. ¶ Doctour. Than wyl I yet ferther aske the this question / whether he of whome he asked counsayle gaue hym selfe to lernynge & to haue knowlege of the law after his capacite or that he toke vpon hi to gyue counsayle and toke no study competent to haue lernynge/ for if he dyd so I thynke he be bounden in conscience to restitucion of all the costes and damages that he susteyned to whome he gaue counsayle if he wolde nat haue sued but throughe his counsaile. And also to the other partie/but if a man that hathe taken sufficient studye in the lawe/mystake the lawe in some poit that is harde to come to the knowle of: he is nat bounden to suche restitucion/ for he hath done that in him is/but if suche a mã knowyng the lawe gyue coũsayle agaynst the lawe: he is bounde in conscience to restitucion of costes & damages as thou hast

sayd byfore/and also to make amendes for the vntrouthe. ¶ Student. what if he aske counsayle of one that he knowethe is nat lerned and he gyueth him counsayle i this case to entre by force wherof he entreth.
¶ Doctoure. Than be they bothe bounde in conscience to restitucion / that is to say, the party if he be sufficient and els the coũsayloure bycause he assented and gaue coũsayle to the wronge. ¶ Studẽt. But what is the counsayllour in that case bounden to/to hym that he gaue counsayle to.
¶ Doctour. To nothynge for there was as mochc defaut in him that asked the coũsayle as in hym that gaue it / for he asked coũsayle of hym that he knewe was ignoraunt/and in the other was defaut for the presumpcion that he wolde take vpon him to gyue counsaile in that he was ignoraũt in. ¶ Stud. But what if he that gaue the counsayle knewe nat but that he that asked it had trust in hym that he coulde and wolde gyue hym good counsayle and that he asked coũsayle for to order wel his conscience howe be it that the truth was that he coulde nat so do. ¶ Doct. Than is he that gaue the counsayle boũden to offer to the other amendes / but yet the other may

nat take it in conscience. ¶ Student. That were somwhat perilous for haply he wold take it thoughe he haue no ryght to it/ excepte the worlde be well amended. ¶ Doc. what thynkest thou in that amendement. ¶ Sudent. I trust euery mā wyl do nowe in this worlde as they wolde be done to/ speake as they thynke/ restore where they haue wne wrōg/ refuse money if they haue no ryght to it though it be offred them do yt they ought for to do by cōsciēce/ though they can nat be cōpelled to it by no lawe & that none wyl gyue coūsaile but that they shal thynke to be accordynge to cōscience/ and if they do: to do that they can to refourme it/ and nat to entremit them selfe with suche maters as they be ignoraunt in/ but in suche cases to sende them that aske the counsayle to other that they shall thynke be more connynge than they are. ¶ Doct. It were very well if it were as thou haste sayd/ but ye more pete is: it is nat alwaye so/ & specially there is great defaute in gyuers of counsayle / for some for theyr owne lucre and profyte gyue coūsayle to cōforte other to sue that they knowe haue no ryght/ but I truste there be but fewe of thē/ & some for drede/ some for fauoure/ some for

malyce/and some vpon confederacies and to haue as moche done for them a nother tyme to hyde the trouthe. And some take vpon them to gyue counsayle in that they be ignorannt in/ and yet whā they knowe the trouthe: wyll nat withdrawe that they haue misdone/for they thynke it shulde be greately to theyr rebuke/and suche ylones folowe nat this coūsayle that sayth(That we haue vnaduisedly done: lette vs with good aduyse reuoke agayne) ¶Student. And if a mā gyue coūsayle in this realme after as his lerninge and cōscience gyueth hym/and regardethe nat the lawes of the realme/gyueth he good counsayle. ¶Doc. If the lawe of the realme be nat ī that case agaynst the lawe of god nor agaynste the law of reasō he gyueth nat good coūsayle/ for euery man is boūde to folowe the lawe of the contrey where he is / so it be nat agaynste the sayd lawes / & so maye the case be that he may bynde hym selfe to restitucion. ¶Student. At this tyme I wyll no ferther trouble the in this question.

The.xviii.question of the student.

Student. If a man of his mere motion gyue landz to Henry herte and to his heyres by indenture vpon condition that he shall yerely at a certayne daye pay to Johanat Style out of the same lande a certayne rent/and if he do nat that than it shalbe lawful to the sayd Johan at style to entre.&c. if the rent i this case be nat paied to Johan at style/ whether maye the sayd Johan at style entre in to the landes by cõ science thoughe he maye nat entre by the lawe. ¶ Doctour. May he nat entre in this case by the lawe syth the wordz of the indenture be that he shall entre. ¶ Studẽt No verily for there is an auncient maxime in the lawe that no man shall take aduauntage of a condicion but he that is ptie or priuey to the condicion/ and this mã is nat partie nor priuey / wherfore he shall haue none aduauntage of it. ¶ Doctoure. Thoughe he can haue none aduauntage of it as partie yet bycause it appereth euidentely that the intente of the gyuer was that if he were nat payed of the rente that he shulde haue the lande. It semeth that in cõscience he ought to haue it thoughe he can nat haue it by the lawe.

¶ Student. In many cases the entente of

the partie is voyde to all intentes if it be nat grounded accordynge to the lawe.
And therfore if a man make a lease to a nother for terme of life/and after of his mere mocion he confermeth his estate for terme of lyfe/to remayne after his dethe to a nother and to his heyres/in this case that remaynder is voyde in lawe and conscience/ for by the lawe there can no remaynder depende vpon no estate but yᵗ the same estate beginneth at the same time yᵗ the remaidre dothe / and in this case the estate beganne byfore and the confirmacion enlarged nat his estate nor gaue hym no newe estate/ but if a lease be made to a man for terme of a nother mannes lyfe and after the lessour onely of his mere mocion confermeth the lande to his lesse for terme of his owne lyfe the remaynder ouer in fee / this is a good remaynder in lawe and conscience/ and some thynketh the intent of the partie shall nat be regarded in this case. ¶ Doctoure.
And in the fyrst case that thou hast put me thynketh though it passe nat by way of remaynder that yet it shall passe as by waye of graunt of the reuercion / for euery dede shalbe take moste stronge agaynst the grauntour and the takyng of the dede i this case

is an attournament in it selfe. ¶ Studēt. That can nat be / for he in the remaynder is nat partie to the dede and therfore it can nat be taken by waye of graunte of the reuercion/for no graūte can be made but to hym that is partie to the dede excepte it be by way of remaynder/and therfore if a mā make a lease for terme of life/and after the lessour graunt to a straūger that the tenaūt for terme of lyfe shal haue the lande to him and to his heyres/ that graunt is voyde if it be made onely of his mere motion without recompence. And in lyke wyse if a mā make a lease for terme of lyfe & after graūt the reuercīō to one for terme of lyfe/the remaynder ouer in fee/and the tenaūt attorneth to hym that hath the state for terme of lyfe onely/intēdyng that he onely shulde haue aduauntage of the graūte: his entēt is voyde/and both shall take aduauntage therof / and the attornament shalbe taken good accordynge to the graunte/ and so in this case though the feoffoure entended yt if the rente were nat payed: that the straūger shulde entre / yet bycause the lawe gyueth hym no entre in that case that intent is voyde/and the same straunger shall neyther entre into the lande by lawe nor

conscience. ¶ Doctour. what shal thanne be done with the lande as thou thynkest after the cõdicion broken. ¶ Student. I thynke that the feoffour in this case may lawfully reentre/for whan the feoffemẽt was made vpon condicion that the feoffe shulde pay a rent to a straunger: in tho wordes is concluded in the lawe that if the rent were nat payed to the straunger that the feoffoure shulde reentre for tho wordes vpon condicion/implie so moche in the lawe thoughe it be expressed. And than whã the feoffour went ferther and sayd that if the rẽt were nat payed that the straunger shulde entre/ those wordes were voyde in the lawe/ and so the effecte of the dede stode vpon the fyrst wordes wherby the feoffour maye reentre in lawe and conscience: but if the fyrst wordes had nat ben cõdicionall I wolde haue holden it the greater doute. ¶ Doctour. I praye the put the case therof in certayne with suche wordes as be nat condicionall that I may the better perceyue what thou meanest therin.

¶ The.xix. question of the studente.

The.xxi. Chapitre.

Student. A man maketh a feoffement by dede indetted/and by the same dede it is agreed y^t y^e feffe shal pay to A.B. & to his heyres a certayne rēt yerely at certayn dayes/& y^t if he pay nat the rēt: thā it is agreed that A.B. or his heyres shall entre into the lande/ and after the feoffe payeth nat the rent/than the question is who ought in cōscience to haue this lande and rent. ¶ Doctoure. Or we argue what conscience wyll: let vs knowe fyrste what the lawe wyll therin. ¶ Student. I thynke that by the lawe neyther the feoffoure ne yet the sayd A.B. shall neuer entre into the lande in this case for nat paymente of the rent for there is no reentre in this case gyuen to the feoffour for nat payment of the rent as there is in the case next byfore/ and the entre that is gyuen to the sayd A.B. for nat paymēt therof is voyde in the lawe bycause he is estrāge to the dede as it appereth also in the next Chapitre byfore. And therfore me thynketh that the greatest doute in this case is to se to what vse this feoffement shalbe taken. ¶ Doctour. There appereth in this case as thou haste put it: no consideracion ne recompence gyuen to the feoffour wherupon any vse may

be deriued/& if the case be so in dede & that the feoffour declared neuer his mynde therin/to what vse shall it thā be takē. ¶ Stu. I thynke it shalbe taken to be to the vse of the feoffe as longe as he payeth the rente/for there is no reason why the feoffe shulde be busied with paymēt of the rent hauyng nothynge for his labour/ne it may nat cōueniently be taken that the intent of the feoffour was so/except he expressed it/& thā it must be taken that he intended to recōpense the feffe for the busynes that he shuld haue in the payment ouer/and by the wordes folowyng his intent appereth to be so as me thynketh/for if the rēt were nat payed he wolde that A.B. shulde entre/ and so it semeth he entended nat to haue any vse hym selfe and thus as me semeth this case shulde varye fro the comō case of vses/that is to saye/ if a man seased of lande make a feoffement therof: and it appereth nat to what vse the feoffement was made ne it is nat vpon any bargayne or other recompence: than it shalbe taken to be to the vse of the feoffoure / except the contrarie can be proued by some bargaine or other lyke/ or that his intēt at the tyme of the lyuerey of seasen was expressed that it shulde be to

the vse of the feoffe or of some other/ & than it shall go accordynge to his entent/ but in this case me thynketh it shalbe taken that his entent was that it shulde fyrst be to the vse of the feoffe for the cause byfore rehercēd excepte the contrarie can be proued/ & so the knowlege of the intēt of the feoffour is the greatest certaynte for knowelege of the vse in this-case as me semeth/ but whā the feoffour goeth ferther and sayeth that if the rent be nat payed: thā the sayd A.B. shulde entre into the lande/ thā it appereth that his entent was that the rente shulde cease/and that A.B. shulde entre into the lande/ and thoughe he maye nat by those wordes entre into the lande after the rules of the lawe/and to haue freholde/yet those wordes seme to be sufficient to proue that the intēt of the feoffour was that he shulde haue the vse of the lande/ for sythe he had the rente to his owne vse and nat to the vse of the feoffoure: so it semeth he shal haue the vse of the lande that is assigned to hym for nat paymente of the rente.

¶ Doctour. But I am somwhat in doute whether he had the rente to his owne vse/ for the intēt of the feoffour myght be that he shuld pay the rēt for hi to some other or

some other vse myght be appoynted ther-
of by the feoffour. ¶ Student. If suche an
entēt can be proued: than that intent must
be obserued/but we be in the case to wete to
what vse it shalbe taken if the entēt of the
feoffour can nat be proued/& thā me thyn-
keth it can nat be otherwyse takē but that
it shalbe to the vse of hī to whome it shulde
be payed/for though it be called a rent yet
it is no rent in the lawe / ne in the lawe he
shall neuer haue remedy for it / thoughe it
were assigned to hym & to his heyres with
out condicion/neyther by distresse / by As-
syse/by writte of Annuite / nor otherwyse/
but he shalbe dryuen to sue in the chaunce-
ry for his remedy / and than whā he sueth
in the chauncery: he must surmitte that he
ought to haue it by conscience/and that he
can haue no remedy for it in the lawe.
And than sythe he hathe no remedy to co-
me to it but by way of cōscience: it semeth
it shalbe taken that whan he hath recouc-
red it that he ought to haue it in conscience
and that to his owne vse without the con-
trarie cane be proued / and if the contra-
rie can be proued: and that the entent of
the feoffoure was that he shulde dispose it
for hym as he shulde appoynt than hathe

he the rēt in vse to a nother vse/and so one vse shulde be depēdynge vpon a nother vse whiche is seldome sene and shall nat be intended tyll it be pued/and so sythe no such matter is here expressed: me thynketh the rent shalbe taken to be to the vse of hī that it is payed to/& that the lande in lykewyse that it is appoynted to hī for nat paymēt of the sayd rent shalbe also to his vse/howe thynkest thou/wyll conscience therin.

¶Doctour. I thynke that as thou takest the lawe nowe: that cōscience(in this case) & the lawe be all one/for the lawe sercheth the same thynge in this case to knowe the vse that conscience doth/ that is to say/the intent of the feoffour/and therfore I wold moue the ferther in one thynge.

¶Student. what is that. ¶Doctoure. That syth the intent of the feoffour/shalbe so moch regarded i this case: why it ought nat also to be as moche regarded i the case that is ī the last Chapitre next byfore this where the wordes be cōdicionall/and gyue the feoffour a tytle of reentre/for me thynketh that though the feoffour may in that case reentre for the condicion broken: that yet after his reentre he shalbe seased of the lande after his entre to the vse of hym to

whome the lande was assigned by the said indenture for lacke of payment of the rent bycause the intent of the feoffour shalbe taken to be so in that case as well as in this. And I praye the let me knowe thy mynde what diuersite thou puttest bytwene them ¶Student. Thou dryuest me nowe to a narowe diuersite/ but yet I wyll answere thy therin as well as I can. ¶Doctour. But fyrst or thou shewe me that diuersite: I praye the shewe me howe vses began/ & why so moche lande hath ben put in vse in this realme as hath ben. ¶Stud. I wyll with good wyl say as me thinketh therin.

Howe vses of lande fyrst by gan/ and by what lawe/and the cause why so moche land is put in vse.The.xxii.Chapitre.

STudent. Uses were reserued by a secondary conclusion of the lawe of reason in this maner/whan the generall custome of propertie wherby euery man knewe his owne good fro his neyghbours was brought in amonge the people. It folowed of reason that suche landes and goodes as a man had: ought nat to be ta-

ken fro hym but by his assent or by order of a lawe/and than syth it is so that euery man that hathe landes hathe therby two thynges in hym/that is to say/the possessi on of the lãde whiche after the lawe of En glande is called the franketenement or the free holde/and the other is auctho?itie to take therby the pro?fites of the lande/wher fore it folo?weth that he that hathe lande & intendeth to gyue onely the possession and free holde therof to a nother / and to kepe the pro?fites to hym selfe ought in reason and conscience to haue the pro?fites/ seyng there is no lawe made to phibite/but that in cõscience suche reseruaciõ may be made. And so whan a man maketh a feoffemente to a nother and intẽdeth that he hym selfe shal take the pro?fites thã that feffe is sayd seased to his vse that so enfeffed hym/ that is to saye/to the vse that he shall haue the possession & freeholde therof as in the lawe to that intent that the feoffoure shall take the pro?fites / and vnder this maner as I suppose vses of lande fyr?ste began. ¶ Doc= tour. It semeth that the reseruyng of such vse is prohibite by the lawe / for if a man make a feoffemẽte and reserue the pro?fites or any parte of the pro?fites as the gresse

wode or such other/that reseruacio is voyd in the lawe/and me thynkethe it is all one to say that the lawe iugeth suche a thynge if it be done to be voyde/and that the lawe prohibiteth that that thynge shall nat be done. ¶ Student Trouthe it is that suche reseruacion is voyde in the lawe as thou sayest and that is by reason of a maxime i the lawe that wylleth that suche reseruacion of parte of the same thyng shalbe iuged voyde in the lawe / but yet the lawe dothe nat phibite that no suche reseruacion shal be made/but if it be made it iugeth of what effecte it shalbe that is to say that it shalbe voyde/and so he that maketh such reseruacion offendeth no lawe therby/ne breketh no lawe therby and therfore the reseruacion in conscience is good/but if it were prohibite by statute that no man shulde make suche reseruacion/ne that no feoffement of truste shulde be made/but that all feoffemētes shulde be to the vse of hym to whome possession of the lande is gyuen / than the reseruacion of suche vse agaynst the statut shulde be voyde bycause it were agaynste the lawe/and yet suche a statute shulde nat be a statute agaynste reason bycause suche vses were fyrste grounded and reserued by

the lawe of reaſō/ but it ſhulde preuent the lawe of reaſon and ſhulde put away the cō ſideracion where vpon the lawe of reaſon was grounded byfore the ſtatute made.
And than to thy other queſtion/ that is to ſaye/why ſo moche lande hathe ben put in vſe/it wyll be ſomwhat longe and peraduēture to ſome tedious to ſhewe al the cauſes particulerly/but the very cauſe whythe vſe remayned to the feffe natwithſtādyng his owne feoffement or fyne and ſomtyme natwithſtandynge a recouery agaynſte hī is al vpon one cōſideracion after the cauſe and intent of the gyfte / fyne / orrecouery/ as is aforeſayd.

¶ Doctoure.

Thoughe reaſon may ſerue that vpō a feoffement a vſe may be reſerued to the feoffour by the intent of the feoffour agaynſte the fourme of his gyfte as thou haſt ſayde byfore/yet I meruayle howe ſuche an vſe may be reſerued againſt a fyne that is one of the hyghеſt recordes that is in the law/ and is taken in the lawe of ſo hyghe effecte that it ſhulde make an ende of all ſtryffes/ or agaynſt a recouere that is ordeyned in the lawe for them that be wronged to recouer theyr ryght by/and me thiketh that great encōuenience and hurte may folowe

whan ſuche recoꝛdes may ſo lyghtly be auoyded by a ſecrete intente oꝛ vſe of the pꝛties and by a nude and bare auerment and mater in dede / and ſpecially ſythe ſuche mater in dede maye be aleged that is nat true wherby may riſe great ſtrife bytwene the parties/and great cõfuſion and vncertaynte in the lawe / but neuertheles ſythe our intente is nat at this tyme to treate of that mater I pꝛay the touche ſhoꝛtly ſome of the cauſes why there hath ben ſo many perſones put in eſtate of landes to the vſe of other as there hathe ben / foꝛ as I here ſay/fewe men be ſole ſeaſed of theyꝛ owne landes. ¶ Student. There hath ben many cauſes therof/of the whiche ſome be put away by diuerſe ſtatutꝫ/and ſome remayne yet/wherfoꝛe thou ſhalte vnderſtande that ſome haue put theyꝛ lande in feoffent ſecretely to the intẽt that they that haue ryght to the lande ſhuld nat knowe agaynſt whome to bꝛyng theyꝛ accion/ & that is mochewhat remedied by diuerſe ſtatutes that gyue acciõs agaynſt pernours and takers of the pꝛofites. And ſomtyme ſuche feoffementes of truſt haue ben made to haue mayntenaunce and beryuge of theyꝛ feoffes/whiche peraduenture were great loꝛdes oꝛ

lers in the countreye/and therfore to put a way suche mayntenaunce: treble damages be gyuen by statute against thē that make suche feoffementes for mayntenaūce. And sōtyme they were made to the vse of mort mayne whiche myght than be made with out forfayture thoughe it were prohibite that the freeholde myght nat be gyuen in mortmayne. But that is put away by the statute of Rycharde the seconde. And somtyme they were made to defraude the lordes of wardes/ reliefs/harryots/and of the landes of theyr bylleyns/ but those poītes be put away by diuerse statutes made i the tyme of kynge Henry the.vii. Somtyme they were made to auoyde executions vpon statutes Staple/Statute Marchaūte/ & Recognisaunce/and remedy is prouided for that that a mā shall haue execution of all suche landes as any persone is seased of to the vse of hym that is so bounde at the tyme of execution sued i the.xix.yere of H. the.vii. And yet remayne feoffementes/ fynes/and recoueres in vse for many other causes/ in maner as many as there dyd byfore the sayde estatutes. And one cause is why they be yet thus vsed is to put away tenaūcy by the curtesy and tytles of

dower. An other cause is for that landʒ in vse shall nat be put in execucion vpon a statute staple/statute marchaunt/nor recognisaunce/but suche as be in the handʒ of the recognisour tyme of the execucion sued. And somtyme landʒ be put i vse that they shulde nat be put in execucion vpon a wryt of Extendi facias ad valenciā. And somtyme suche vses be made that he to whose vse.ꝛc.may declare his wyl theron/& somtyme for surety of diuerse couenauntes in indentures/of mariage/& other bargaus/ and these two last articles be the chyefe principal causes why so moche lāde is put in vse. Also landʒ in vse be no asses neyther in a Fourmedone nor in an accion of Det agaynste the heyre:ne they shall nat be put in execucion by an Elegit sued vpon a recouere as some men say and these be the very chyefe causes as I nowe remēbre why so moche lande standeth i vse as there with/ and all the sayd vses be reserued by the intente of the parties vnderstande or agreed bytwene them / and that many tymes directely agaynst the wordes of feoffement/ fyne/or recouere / and that is done by the lawe of reason as is aforesayd. ¶ Doctour May nat an vse be assigned to a straunger

as well as to be reserued to the feoffour if the feoffour so appoynted it vpon his feoffement. ¶Student. yes as well / & in lyke wyse to the feoffe and that vpon a free gyfte without any bargayne or recompence if the feoffour so wyl. ¶Doctour. what if no feoffement be made but that a man graūt to his feoffe that fro thens forthe he shall stande seased to his owne vse/is nat the vse chaunged though there be no recompence ¶Student. I thynke yes for there was an vse in Esse byfore the gyfte whiche he may as lawfully gyue away as he myght the lande if he had it in possession. ¶Doc. And what if a man beynge seased of lande in fee graunte to a nother of his mere motion without bargayne or recompēce that he fro thens forthe shalbe seased to the vse of the other/is nat that graunte good. ¶Student. I suppose that it is nat good/ for as I take the lawe: a man can nat commence an vse but by lyuerey of seasō or vpon a bargayne or some other recompence. ¶Doctoure. I holde me contented with that thou haste sayd in this Chaphitre for this tyme and I pray the shewe me what diuersite thou puttest bytwene those two cases that thou hast byfore reherced in the

The.xxiii. Chapitre.

xx. Chapitre and in the.xxi. Chapitre of this present boke. ¶ Student. I wyl with good wyll.

The diuersite betwene two cases here after folowynge/wherof one is put in the.xx. Chapitre and the other in the.xxi. Chapitre of this present boke. The.xxiii. Chapitre.

STudent. The fyrste case of the sayd two cases is this. A man maketh a feoffement by dede indented vpon a condicion that the feoffe shall paye a certayne rente yerely to a straunger. &c. & if he paye it nat: that it shalbe lawfull to the straunger to entre into the lande. In this case I sayd byfore in the.xx. Chapitre: that the straũger myght nat entre bycause that he was nat pryuey vnto the condicion. But I sayd that i that case the feoffour myght lawfully reentre by the fyrste wordꝭ of the indenture bycause they implye a condiciõ in the lawe & that the other wordes (that is to saye) that the straunger shulde entre be voyde in lawe and conscience. And therfore I sayd ferther that whan the feoffour had reẽtred that he was seased of the lãde to his owne vse & nat to the vse of the strã-

ger/thoughe his entent at the makyng of the feoffement were that the straunger after his entre shuld haue had the lād to his owne vse if he myghte haue entred by the law. And the cause why I thynke that the feoffour was seased i that case to his owne vse I shall shewe the afterwarde. The seconde case is this. A man maketh a feoffement in fee/and it is agreed vpon the feoffement that the feoffe shal pay a yerely rēt to a straūger/and if he pay it nat: that thā the straunger shall entre into the lande. In this case I sayd as it appereth in the sayd.xxi.Chapitre/that if the feoffe payed nat the rent: that the straunger shuld haue the vse of the lande thoughe he maye nat by the rules of the lāde entre into the lāde & the diuersite betwene the cases me thynkethe to be this. In the fyrste case it appearethe as I haue sayd byfore in the sayde xx.Chapitre/that the feoffour myght lawfully reentre by the lawe for nat payment of the rent/and than whā he entred accordynge: he by that entre auoyded the fyrste lyuery of season/in so moche that after the reentre he was seased of the lande of lyke estate as he was byfore the feoffemente.

And soo remaynethe noo thynge/

wherupon the straunger myght grounde his vse/ but onely the bare graunte or entente of the feoffour whā he gaue the land to the feoffe vpon condicion that he shulde pay the rente to the straunger / and if nat/ that it shulde be lawful to the straunger to entre/for the feoffement is auoyded by the reentre of the feoffour as I haue sayd byfore/and as I sayd in the last Chapitre as I suppose a nude or bare graunte of hym that is seased of lande is nat sufficiente to begynne an vse vpon. ¶ Doctour. A bare graunte maye chaunge an vse as thou thy selfe agredest in the last Chapitre: why thā may nat an vse as well begyn vpon a bare graunt. ¶ Student. whan an vse is i Esse he that hathe the vse may of his mere mocion gyue it awaye if he wyll without recompence as he myght the lande if he had it in possession/but I take it for a grounde that he can nat so begynne an vse without a lyuerey of season or vpon a recompence or bargayne/& that there is suche a groūd in the lawe that it maye nat so begynne it appereth thus/ it hath ben alwaye holden for lawe that if a man make a dede of feoffement to a nother and delyuer the dede to hym as his dede / that in that case he to

whome the dede is delyuered hath no tytle ne medelynge with the lande afore lyuerey of seasō be made to hym but only that he may entre and occupie the lāde at the wyll of the feoffour/and there is no boke sayth that the feoffour in that case is seased there of byfore lyuerey to the vse of the feoffe.
And in lykewyse if a man make a dede of feoffement of two acres of lande that lye in two shyres intendyng to gyue them to the feoffe and maketh lyuerey of seasō in the one shyre & nat in the other/ in this case is it comōnly holden in bokes that the dede is voyde to that acre where no lyuerey is made excepte it lye within the viewe saue onely that he maye entre & occupie at wyl as is aforsayde/ and there is no boke that sayth that the feoffe shulde haue the vse of the other acre / for if an vse passed therby than were nat the dede voyde to all intentes/and yet it apperethe by the wordes of the dede that the feoffour gaue the landes to the feoffe/but for lacke of lyuerey of seasō the gyfte was voyde and some thynketh it is here without lyuerey of seasō be made accordynge. But in the seconde case of the sayd two cases the feoffe may nat reentre for non payment of the rente/and so

the fyrste lyuerey of season continueth and standeth in effecte/and therupon the fyrste vse maye wel begynne & take effecte in the straunger:of the lande whā the rent is nat payed vnto hym accordynge to the fyrst agrement. And so me thynketh that in the fyrst case the vse is determined by cause the lyuerey of season where vpon it cōmenced is determined/and that in the seconde case the vse of the lande taketh effecte ī the strāger for nat paymēt of the rēt by the graūt made at the fyrste lyuerey whiche yet continueth in his effecte/and this my thiketh is the diuersite bytwene the cases. ¶ Doc. yet natwithstandyng the reason that thou haste made me thynketh that if a man seased of landes makethe a gyfte therof by a nude promyse without any lyuerey of season or recompēce to hym made:and graūt that he shalbe seased to his vse: that thoughe that promyse be voyde in the lawe:that yet neuertheles it muste holde and stande good in conscience and by the lawe of reason/for one rule of the lawe of reason is/ᵗ we may do nothynge against the trouthe/ and syth the trouthe is that the owner of the grounde hathe graunted that he shall be seased to the vse of the other:that graūt

muste nedes stande in effecte or els there is no trouth in the grauntour. ¶ Student. It is nat agaynste the trouthe of the grañ tour in this case thoughe by that graunte he be nat sealed to the vse of the other/ but it proueth that he hathe graũted/ that the lawe wyll nat waraunt hym to graunte/ wherfore his graunte is voyde. But if the grauntour had gone ferther and sayd that he wolde also suffre the other to take the p fites of the landes without let or other in= terupcion/ or that he wolde make hi estate in the lande whan he shulde be requyred/ than I thynke in those cases he were boũ= den in conscience by that rule of the lawe of reason that thou hast remembred to per fourme them/if he intended to be bounden by his pmyse/for elles he shulde go agaist his owne trouthe and agaynste his owne pmyse. But yet it shal make no vse in that case/ nor he to whome the promyse is ma= de shall haue no accion in the lawe vppon that promyse althoughe it be nat perfour= med/ for it is called in the lawe a nude or a naked promyse. And thus me thyn= kethe that in the fyrste case of the said two cases the graunte is nowe auoyded in the lawe by the reentre of the feoffour/

feoffour/and that the feoffour is nat bounden by his graunte neyther in lawe nor cõscience but that i the secõd case he is boũd/ so that the vse passethe frõ hym as I haue sayd byfore. ¶ Doctoure. I holde me content with thy conceite for this tyme/but I pray the shewe me somwhat more at large what is taken for a nude cõtracte or a naked promyse in the lawes of Englãde/and where an accion maye lye there vpon and where nat. ¶ Student. I wyll with good wyll say as me thynketh therin.

¶ what is a nude contracte or naked promyse after the lawes of Englande/ and whether any accion may lye thervpon. The.xxiiii. Chapitre.

STudent. Fyrste it is to be vnderstande that contractes be grounded vpon a custome of the realme and by the law that is called (Jus gentium) and nat dyrectely by the lawe of reason/for whan all thynges were in comon: it neded nat to haue contractes/but after ꝑperty was brought in: they were ryght expediente to all people/ so that a man myght haue of his neyghboure that he had nat of his owne/ andthat coulde nat be lawfully but by his

gyfte/by way of lendynge/concorde/ or by some lease/bargaine/or sale/and suche bargaynes and sales be called contractes/and be made by assent of the parties vpon agrement bytwene them of goodes or landes for money or for for other recompence/ but of money vsuell/for money vsuell is no contracte. Also a concorde is properly vpō an agremēt bytwene the parties wt diuers artycles therin/ some rysyng on the one pt and some on the other/as if Johan at style letteth a chambre to Henry herte and it is ferther agreed bytwene them that the said Hēry herte shall go to borde with the sayd Johan at style / and the sayd Henry herte to paye for the chābre and bordynge a certayne sūme. &c. this is ꝓperly called a concorde/but it is also a contracte and a good accion lyeth vpō it/howe beit it is nat moche argued in the lawes of Englāde what diuersitie is bytwene a cōtracte/a cōcorde/ a ꝓmyse/a gyfte/a lone/or a pledge/a bargayne/a couenaunt/or suche other/ for the intente/of the lawe is to haue the effecte of the mater argued and nat the termes/and a nude contracte is where a man maketh a bargayne or a sale of his goodes or landes wtout any recōpence appoynted for it.

As if I saye to a nother I sell the all my lande or all my goodes and nothyng is assigned that the other shall gyue or pay for it/that is a nude contracte/ and as I take it:it is voyde in the lawe and conscience/ and a nude or naked promyse is where a man promyseth an other to gyue hym certayne money suche a day or to buylde hym an house/ or to do hym suche certayne seruyce/and nothynge is assigned for the money/for the buyldynge/nor for the seruyce/ these be called naked promyses/bycause there is nothyng assigned why they shuld be made/and I thynke no accion lyethe in those cases thoughe they be nat perfourmed. Also if I promyse to a nother to kepe hym suche certayne goodes sauely to such a tyme/and after I refuse to take thē ther lyeth no accion againste me for it/but if I take them and after they be lost or empeyred throughe my negligent keppynge/there an accion lyeth. ¶ Doctour. But what opinion holde they that be lerned in the law of Englāde in suche promyses that be called naked or nude promyses/ whether doo they holde that they that make the pmyse be boūden in cōscience to perfourme theyr promyse thoughe they can nat be compel-

led therto by the lawe or nat. ¶ Student. The bokes of the lawe of Englãde treate lytell therof/for it is lefe to the determinacion of doctoures/and therfore I pray the shewe me somewhat nowe of thy mynde therin/and than I shall shewe the therin somwhat of the myndes of diuerse that be lerned in the lawe of the realme.

¶ Doctoure. To declare that mater playnly after the sayinge of doctoures: it wolde aske a longe tyme and therfore I wyl touche it brickly to gyue the occasion to desyre to here more therin here after. Fyrste thou shalte vnderstande that there is a promyse that is called an aduowe/& that is a promyse made to god/and he that dothe make suche a vowe vpon a deliberate mynde entendynge to perfourme it is bounde in conscience to do it/though it be onely made in the herte without pronouncynge of wordes/and of other promyses made to man vpon a certayne consideracion/if the promyse be nat agaynste the lawe.

As if A. promyse to gyue B. xx. pounde/by cause he hathe made hym suche a house or hathe lente hym suche a thynge or suche other lyke/I thynke hym bounde to kepe his promyse. But if his promyse be so naked

that there is no maner of cõsideracio̅ why it shulde be made/than I thynke hym nat bounde to perfourme it/for it is to suppose that there was some errour in the making of the promyse/ but if suche a promyse be made to an vniuersitie/to a citie/to ye chur ehe/to the clergy/or to pore men of suche a place/and to the honoure of god or suche o ther cause lyke/as for mayntenaunce of ler nynge/of the comon welthe/of the seruyce of god/or in relyefe of pouertie or suche o ther/than I thynke that he is bounden in conscience to perfourme it thoughe there be no cõsideracion of worldly profite that the grauntour hath had or entẽdeth to ha ue for it/and in all suche promyses it must be vnderstande that he that made the pro myse intended to be bounde by his ꝓmyse/ for els comõly after al doctoures he is nat bounde/oneles he were bounde to it byfore his promyse. As if a man promyse to gyue his father a gowne that hathe nede of it to kepe hym fro colde/and yet thinketh nat to gyue it hym/neuertheles he is boũde to gyue it for he was bounde therto byfore.
Also after some doctours a man may be ex cused of suche a promyse in conscience by a casualite that cometh after the promyse if

it be so that if he had knowen of that casu-alite at the makyng of the ꝑmyse he wolde nat haue made it. And also suche promyses if they shall bynde they muste be honeste / lawful/ and possible/ and elles they are nat to be holden in conscience though there be a cause. ꝛc. And if the promyse be good and with a cause thoughe no worldly profyte shall growe therby to hi that maketh the promyse but onely a spirituall profyte as in the case byfore rehersed of a ꝑmyse made to an vniuersitie/ to a citie / to the chur-che/ or suche other and with a cause/ as to the honoure of god other/ there it is moste comonly holden that an accion vpon those promises lyeth in the lawe canon. ¶ Stu. whether dost thou meane in suche promy-ses made to a vniuersite/ to a citie/ or to su-che other as thou haste reherced byfore / & with a cause / as to the honoure of god or suche other. That the partie shalbe boũde by his promyse if he intẽded nat to be boũ-den therby ye or nay. ¶ Doctour. I thynk naye no more than vpon ꝑmyses made vn to comon persones. ¶ Student. And than me thinketh clerely that no accion can lye agaynst hym vpon suche promyses / for it is secrete in his owne cõcience whether he

entended for to be bounde or naye. And of the entente inwarde in the herte: mannes lawe cane nat iuge / and that is one of the cauſes why the lawe of god is neceſſarye (that is to ſay) to iuge inwarde thynges / and if an accion ſhulde lye in that caſe in the lawe Canon/than ſhulde the lawe Canon iuge vpon the inwarde intente of the herte/whiche can nat be as me ſemeth.
And therfore after diuerſe that be lerned i the lawes of the realme: all promyſes ſhall be taken in this maner. That is to ſay: If he to whome the promyſe is made: haue a charge by reaſon of the promyſe whiche hath alſo perfourmed: than in that caſe he ſhall haue an accion for that thynge that was promyſed thoughe he that made the promyſe haue no worldly profite by it. As if a mā ſaye to a nother/hele ſuche a pore mā of his diſeaſe/or make ſuche an hyghe waye / and I ſhall gyue the thus moche/ and if he do it I thynke an accion lyeth at the comon lawe. And more ouer thoughe the thynge that he ſhall do be al ſpirituall: yet if he perfourme it I thynke an accion lyethe at the comon lawe. As if a man ſay to a nother / faſt for me all the next Lent and I ſhall gyue the.xx. pounde/ & he per-

fourmethe it / I thynke an accion lyeth at the comon lawe. And in lyke wyse if a mā saye to a nother mary my doughter and I wyll gyue the.xx.pounde. Upon this promyse an accion lyeth if he mary his doughter / and in this case he cane nat discharge the promyse thoughe he thought nat to be bounde therby/for it is a good contracte/ and he maye haue Quid pro quo / that is to saye / the preferemente of his doughter for his money. But in those promyses made to an vniuersite or such other as thou hast remembred byfore/with such causes as thou hast shewed/that is to say / to the honoure of god/ or to the encrease of lernynge/or suche other lyke/where the ptie to whome the promyse was made is bounde to no newe charge by reason of the pmyse made to hym but as he was boũde to byfore/there they thynke that no accion lyeth agaynst hī though he perfourme nat his promyse / for it is no contracte / and so his owne conscience must be his iuge whether he intended to be bounde by his promyse or nat. And if he intended it nat: than he offended for his dissimulacion only/ but if he intended to be bounde: than if he perfourme it nat: vntrouthe is in hym/ and he

proueth hym selfe to be a lyer whiche is p hibited as well by the lawe of god as by the lawe of reason/and ferthermore many of that be lerned in the lawe of Englande holde that a man is as moche bounden in conscience by a promyse made to a comon persone if he intended to be bounde by his pmyse as he is i the other cases that thou haste remembred of a promyse made to the churche/or to the clergie/or such other/ for they say that as moche vntrouth is in the brekynge of the one as of the other/& they say that the vntrouthe is more to be pondered than the persone to whome the promyses be made. ¶ Doctoure. But what holde they if the pmyse be made for a thig paste/as I promyse the.xl.poũde for that thou hast buylded me suche a house/lyethe an accion there. ¶ Studēt. They suppose nay/but he shalbe bounde in conscience to perfourme it after his entente as is byfore sayd. ¶ Doctour. And if a man promyse to gyue a nother xl.pounde in recompēce for suche a trespas that he hathe done hym/lyeth an accion there. ¶ Student. I suppose nay/and the cause is for that suche pmyse be no perfite contractes/for a contracte is properly where a man for his money shall

haue by assēt of the other partye certayne goodes or some other profite at the tyme of the contracte or after/ but if the thynge be pmysed for a cause that is past by way of a recompēce thē it is rather an accorde then a contracte/but then the lawe is that vpon suche accorde the thynge that is pmysed in recompence muste be payde or delyuered in hande/for vpon an accorde there lyeth no accion. ¶Doct.But in the case of trespas whether holde they that he be bounde by his promise though he intēded nat to be bounde thereby. ¶Student. They thynke nay no more thē in the other cases that be put before. ¶Doct. In the other cases he was nat bounde to that he promysed but onely by his promyse/but i this case of trespas he was boūde i conscience before the promise to make recōpence for the trespas and therfore it semeth that he is bounde in conscience to kepe his promyse thoughe he intēded nat to be boūden thereby. ¶Stu. Though he were bounde before the promyse to make recompēce for his trespas yet he was nat bounden to no sūme in certayne but by his promyse/and bycause y^t y^e sūme may be to moche or to lytel and nat egal to the trespas/ and that

the party to whome the treſpas was done natwithſtādyng the promyſe is at lyberty to take his accīō of treſpas if he will therfore they holde that he maye be his owne iuge in cōſcience whether he intēdyd to be bounde by his promyſe or nat as he may in other caſes/but if it were of a dette/then they holde that he is bounden to performe his promyſe in conſcience. ¶ Doctoure What if in the caſe of treſpas he afferme his promyſe with an othe. ¶ Student Then they holde that he is bounde to performe it for ſauuge of his outhe thoughe he intended nat to be boūden but if he intēded to be bounde by his promiſe/ then they ſay that an othe nedeth not but to enforce the ꝓmyſe for they ſay he breketh the lawe of reaſō whiche is yᵗ we may do nothyng agaynſte the trouthe/as well when he breketh his promyſe that he thought in his owne herte to be boūde by as he dothe whē he breketh his othe thoughe the offence be not ſo greate by reaſō of the periury more ouer to that thou ſayſte that vpon ſuche promyſes as thou haſt reherſyd before ſhal lye an accyō after the lawe canon beryye as to yᵗ in this realme there cā no accīō lye theron in yᵉ ſpiritual courte if yᵉ

promyse be of a temporall thynge for a p-
hybicion or a premunire facias shulde lye
in that case. ¶ Doctor. That is meruayle
syth there can no accyon lye theron in the
kynges courte as thou sayst thy selfe.
¶ Student. That maketh no mater/for
though there lye no accion in the kynges
courte agaynst executours vpō a symple
contracte/yet if they be suyd in that case
for the dette in the spirituall court a pro-
hybicion lyeth. And in lyke wyse if a mā
wage his lawe vntruly in an accyō of det
te vpō a cōtracte in the kynges courte/yet
he shall not be sued for that periury in the
spirituall courte/ and yet no remedy lyeth
for that periurye in the kynges courte/for
the prohybicion lyeth not onely where a
man is sued in the spirituall courte of su-
che thynges as the partye maye haue his
remedie i yᶜ kynges courte but also where
the spirituall courte holdeth plee in suche
case where they by the kynges prōgatiue
and by the aūcyent custome of the realme
ought none to holde. ¶ Doctour. I wyl
take aduysement vppon that thou haste
sayde in this matter tyll another tyme &
I praye the nowe procede to another que-
styon.

The.xxv. chapitre.

¶ The.xx. question of the student.

The.xxv.chapitre.

STudēt. A man hath two sones / one borne before espousels and the other after espousels and the father by his wyll bequetheth to hys sonne and heyre all hys goodes whyche of these two sonnes shall haue the goodes in conscience.

¶ Doctoure. As I sayd in our fyrste dyalogue in latyn the last chapitre/the wute of this case depēdeth not in the knowyng what conscyence wyll in the case/but rather in knowynge whiche of the sones shall be iuged heyre (that is to saye) whether he shalbe takē for heyre that is heyre by the spirituall lawe or he that is heyre by the law of the realme/or els that it shal be Juged for hym that the father toke for heyre. ¶ Student. As to that poynte admyt the fathers mynde not to be knowen or els that his mynde was that he shulde be taken for heyre that sholde be iuged for heyre by that law that in thy case it ought to be iuged by. And thā I pray the shewe me thy mynde therin/for though the questyon be not dyrectly dependynge vpon that poynte to se what conscience wyll in

this caſe/yet it is ryght expedient for the well orderynge of cõſcience that it be knowen after what lawe it ſhalbe Juged for if it ought to be iuged after the temporall lawe who ſhulde be heyre: than it were agaynſte conſcience if the Juges in the ſpirituall lawe ſhulde Juge hym for heyre that is heyre by the ſpirituall lawe/& I thynke they ſhulde be bounde to reſtitucion therby/& therfore I pray the ſhewe me thyn oppinion after what lawe it ſhall be iuged. ¶ Doctour. Me thynketh that in this caſe it ſhalbe iuged after the lawe of the churche/for it apperth that the byqueſt is of goodes/and therfore if any ſute ſhalbe taken vpon the execucyon of the wyll for that bequeſt it muſte be take in the ſpirituall courte & when it is dependynge in the ſpirituall courte me thynketh it muſte be iuged after the ſpirituall lawe for of the temporall lawe they haue no knowlege/nor they are not bounde to knowe it as me thynketh & more ſtronger not to iuge after it. But if the byqueſt had ben of a chatell reall as of a leaſe for terme of yeres or of a warde or ſuche other then the matter ſhulde haue come i debate in the kynges courte/and the I thynke

the iuges there shulde iuge after the lawe of the realme and that is that the yonger brother is heyre/ and some thynketh the dyuersytye of the courtes shall make the dyuersytye of the iugement. ¶ Student Of that myght folowe a greate inconuenyēce as me semeth/ for it myght be that in suche case bothe chatels realle & chatels personel were in yᶜ wyll/ & thā after thyne opinion yᶜ one sonne shulde haue the chatels personel: & the othersone the chatels real & it can nat be cōuenyently taken as me thinketh but that the fathers wyll was that the one sōne sholde haue all & not to be deuyded. Therfore me thynketh that he shal be iuged for heyre that is heyre by the comon lawe. And that the iuges spirituall in this case be bounde to take notyce what the comō lawe is for syth the thynges that be in bargaunce be temporall that is to say / the goodes of the father / it is reason that the ryght of them in thys realme shall be determyned by the lawe of the realme. ¶ Doctoure. Howe maye that be for the Juges spirituall knowe not the lawe of the realme ne they can not knowe it as to the mooste parte of it for moche parte of the lawe is in suche speche that fewe men haue knowlege of it & there

is no meanes ne kamplyarytye of study bytwene them that lerne the sayd lawes/ for they be lerned in seuerall places & after dyuers wayes & after diuers maners of techynges & in diuers speches & comonly the one of them haue none of the bokes of the other/ and to bynde the spirituall Juges to gyue iugement after that lawe that they knowe not/ne that they can not come to the knowlege of/it semeth nat resonable. ¶ Studēt. They must do therin as the kynges Juges must do when any matter cometh before them that ought to be Juged after the spirituall lawe/ whe reof I put dyuers cases in our fyrste dia loge in englysh the. vii. chapitre/ that is to say/ they muste eyther take/ knowlege of it by theyr owne studye/ orelles they muste enquere of thē that be lerned in the lawe of the churche what the lawe is & in lykewyse muste they do. But it is to doute that some of them wolde be lothe to aske any suche questyon in suche case/ or to confesse that they are bounde to gyue theyr iugement after the tēporall lawe & surely they may lyghtly offend theyr conscience. ¶ Doctoure. I suppose that some be of opynion that they are not bounden to

knowe the lawe of the realme and verelye to my remẽbraũce I haue not herde that iuges of the spirituall lawe are bounde to knowe the lawe of the realme ¶ Studẽt. And I suppose that they are nat onely bounden to knowe the lawe of the realme or to do that in them is to knowe it whan the knowlege of it openeth the ryght of the matter that depeindeth byfore thẽ but that they be also boũden to knowe where and i what case they ought to Juge after it / for in suche cases they muste take the kynges lawe as the lawe spirituall to that poynte and are bounden in conscience to folowe it as it may appere by diuers cases wherof one is this. Two ioynttenauntes be of goodes & the one of them by his laste wyl bequeteth all his parte to a straũger and maketh the other ioynttenaunt his executor and dyeth / if he to whome the bequest is made sue the other iointtenaunt / vpon the legacie as executour &c. vpõ this matter shewed / the iuges of the spirituall lawe are bounden / to iuge the wyll to be voyde / by cause it is voyde by the lawe of the realme wherby the iointtenaunt hath right to the hole goodes by y^c title of the suruiuour & is iuged to haue y^c goodes as

by the fyrst gyfte whiche is before yᵉ tytle of yᵉ wyl & must therfore haue ꝓferremēt as yᵉ elder title & if yᵉ iuges of yᵉ spirituall courte iuge other wyse: they are boũde to restitucio & by lyke reason the executours of a man that is outlawed the tyme of his dethe may dyscharge them selfe in the spirituall courte of the perfourmyng of legacyes / bycause they be chargeable to the kynge and yet there is no suche lawe of outlagary in the spirituall lawe.

¶ Doctoure. By occasyon of that thou haste sayde before I wolde aske of the this question. If a parson of a churche alyen a porcyon of dysmes accordyng as the spirituall lawe hathe ordeyned / is nat that alienacion sufficient thoughe it haue nat the solempnities of the temporall lawe.

¶ Student. I am in doute therin yf the porcion be vnder the fourth parte of the value of the churche but yf it be to the value of. the. iiii. parte of the churche or aboue / it is not sufficient and therfore was the wrytte of ryght of dysmes ordeyned / & if a wrytte of ryght of dysmes it be Iuged in the kynges court for the patrone of the successoure of hi thatalieneth bycause

the alyenacyon was nat made accordynge to the comon lawe/ than the Juges of the spirituall lawe are bounden to gyue theyr iugement accordyng to the iugemēt gyue in the kyngs court. And in lyke wyse if a parson of a churche agre to take a pencyō for the tythe of a mylle / yf the pencyō be to the fourthe parte of the value of the churche or a boue / than it muste be alyened after the solempnytyes of the kynges lawes as landes & tenementes muste / or elles the patrone of the successoure of hym that alyened maye bryng a wryt of ryght of dysmes & recouer in the kynges courte/ & than the Juges of the spirituall courte are bounden to gyue Jugemēt in the spiritual courte accordyngly as is afore sayd

¶ Doctour. I haue herde say that a wryt of ryghte of dysmes is gyuē by the statute of westmynster.the seconde & that speketh onely of dysmes and not of pencion.

¶ Student. where a parson of a churche is wrongfully deforced of his dysmes and is lette by an Indicault to aske his dysmes in the spirituall court than his patrō may haue a wrytte of ryght of dysm : & by the statute that thou spekest of/ for there lay none at the comon lawe for the

perſon had there good ryght thoughe he were let by the idicault to ſue for his right But whan the perſō had no remedy at the ſpirituall lawe there a wrytte of ryght of diſmes lay for the patrō by the comō lawe as well of pencyons as of dyſmes / & ſome ſaye that in ſuche caſe it lay of leſſe than of the fourthe parte by the comō lawe but that I paſſe ouer. And the reaſon why it lay at the comōlawe if the dyſme or pencyōs were aboue the fourth parte. &c. was this by the ſpirituall lawe the alienacyō of the perſō with aſſent of the biſſhope and of the chapitre ſhall barre the ſucceſſour without aſſente of the patrone/ and ſo the patrone might leſe his patronage & he nat aſſentinge therto for hys encūbent myght haue no remedy but i the ſpirituall court and there he was barred wherfore the patrone i that caſe ſhall haue his remedy by the comon lawe where the aſſent of the ordinarie and chapitre without the patrone ſhall nat ſerue as is ſayd before. But where the encumbent had good ryght by the ſpirituall lawe there lay no remedy for the patrone by the comō lawe though the encumbēt were let by an indicault / & for that cauſe was the ſayde ſtatute made and

it lyeth as wel by the equitie for offerings and penſions as for diſmes Than farther I wolde thynke that where the ſpirituall court may holde plee of a temporall thige that they muſt iuge after the temporall lawe/ & that ygnoraunce ſhall not excuſe them in that caſe for by takynge of theyr office they haue boũde them ſelfe to haue knowlege of as moch as belõgeth to ther office as al Juges be ſpiritual & tẽporal. But if it were in argument in this caſe whether the eldeſt ſõne myght be a preſte by cauſe he is a baſtarde i y^{e} tẽporal lawe that ſhuld be iuged after y^{e} ſpiritual lawe for y^{e} matter is ſpiritual. ¶ Doct. yet not withſtandynge all the reaſons that thou haſte made I cã not ſe howe the iuges of the ſpirituall lawe ſhall be compelled to take notice of the temporall lawe ſeynge that the moſt parte of it is in the frenche tonge for it were harde that euery ſpirituall iuge ſhulde be compelled to lerne that tõge: But if the lawe of the realme were ſet i ſuche order y^{t} they that itende to ſtudye y^{e} lawe canõ might firſt haue a ſyght of the lawe of the realme as they haue now of y^{e} lawe ciuil & y^{t} ſome bokes & treatiſes were made of caſes of cõſcience

cõcernynge those two lawes as there be nowe cõcernynge the lawe ciuil and the lawe canõ I wolde allẽt yt it were ryght expedyẽt & thã reasõ myght serue yc better yt they shulde be compelled to take notyce of the lawe of the realme as they be nowe bounden in suche countreys as the lawe ciuill is vsed to take notyce of that lawe. ¶ Student Me thynketh thyne oppinion is ryght good and reasonable but tyll suche an order be taken they are boũde as I suppose to enquere of theym that be lerned i the comon lawe what the lawe is / and so to gyue theyr iugement accordyng / if they wyll kepe them selfe fro offence of cõscyence/and for as moche as thou haste well satisfied my mynde in all these questions before. I praye the nowe that I maye sõwhat fele thy mynde in dyuers artycles that be wryten in dyuers bokes for the orderynge of cõscyence vpon the lawe canon and ciuill / for me thynketh that there be dyuers conclusyõs put in dyuers bokes / as i the sũmes callyd Summa angelica / and Summa rosella / and dyuers other for the good order of cõsciẽce that be agaynst the lawe of this realme & rather blynde conscience

thā to gyue any lyght vnto it. ¶ Docto. I pray the shewe me some of those cases ¶ Student. I wyll with good wyll.

whether an abbot may with cōsciēce present to an aduouson of a churche that belōgeth to the house without assente of the couent. The.xxvi.chapitre.

✶

Doctour. It appereth i the chapitre Canoscitur de hus que fiunt a prelates / the whiche chapitre is recited in the summe called Summa angelica in the title abbas the. xxvii. article that he maye nat without any costume or any speciall priuilege do helpe there in. Student. Trouthe it is that there is suche a decretale / but they that be lerned in the lawe of Englande holde that decretale byndeth not in thys realme / and thys is the cause why they do holde that oppyny on. By the lawe of the realme the hole disposicion of the lādes and goodes of the abbey is the abbot only for the tyme that he is abbot & not in the couent / for they be but as deed persones i the lawe & therfore the abbot shall suc & be sued onely without

the couēt do homage fealtie atturne make
leases & p̄sēt to aduousons onely in his
owne name / & they saye farther that this
authoritie can not be taken fro hym but
by the lawe of the realme / and so they say
that the makers of that decretale exceded
theyr power wherfore they say it is not to
be holden in conscience/no more than if a
decre were made that a lease for terme of
yeres or at wyll made by the abbot with-
oute the couēte shuld be immedyatly voy-
de / & so they thynke that the abbot may ī
thys case p̄sēt ī his owne name without
offēce of cōscience by cause the sayd decre-
tale holdeth nat ī this realme. ¶ Doctou-
re. But many be of opp̄yonō that no man
hath authorytye to p̄sent in ryght and
conscience to any benefice with cure but
the pope or he that hath his authorytye
therof derived fro the ℘ope for they saye
that for as moche as y^e ℘ope is the vycar
general vnder god & hath the charge of y^e
soules of all people that be in the flocke of
Christes churche it is reasō y^t syth he can
nat ministre to all ne do y^t is necessarie to
all the people for theyr soule helthe in his
owne persō that he shall assygne deputyes
for his dyscharge ī that behalfe/ & by cause

patrons clayme to preſent to churches in this realme by theyr owne ryght without tytle deriued fro the ℘ope they ſaye that they vſurpe vpon the popes authoritie/ & therfore they conclude that thoughe the abbot haue title by the lawe of the realme to preſent ī this caſe ī his owne name that yet bycauſe that title is againſt the popes prerogatiue that that title ne yet the lawe of the realme that mayntenyth that tytle holdeth not i cōſcyence. And they ſay alſo that it belongeth to the lawe canon to determine y^e^ ryght of p̄ſentmēt of benefices for it is a thynge ſpirituall and belongeth to the ſpirituall iuriſdicciō as the deprȳuaciō fro a benefice doth & ſo they ſaye y^e^ ſayd decretale bīdeth i cōſcyēce thoughe i the lawe of the realme it binde nat. ¶ Studēt. As to thy fyrſte cōſideracion. I wolde ryght well agre that if the patrōs of churches in this realme claymed to put encumbentes in to ſuche churches as ſhulde fall voyde of theyr patronage without p̄ſēting them to the byſſhop or if they claymed that y^e^ bhyſſhop ſhold admit ſuche encumbent as they ſhulde preſent without any examinacion to be made of his abylite in that behalfe/that that clayme were againſt

reaſō and cōſcyēce for the cauſe that thou haſt rehercyd but for as moche as the patrōs i thy realme clayme no more but to p̄ſent theyr encūbentes to the biſſhop & the the byſſhop to examin the abylitie of the cucumbēt/& if he fynde hym by the examinacyō nat able to hauecure of ſoule/he the to refuſe hi & ye patrone to preſēt another that ſhal be able/& if he be able thā ye biſſhop to admit hi iſtitute hi & iducte him. I thike yt this claymc & theyr p̄ſentemētes therupon ſtande with good reaſon and cōſcyence / and as to the ſeconde conſideracyō it is holden in the lawes of the realme that the right of preſētement to a churche is a tempozall enherytaūce & ſhall deſcēde by courſe of enheritaūce fro heyre to heyre as lādes & tenementes ſhall & ſhall be takē as an aſſes as lādes & tenemētes be & for the tryall of the ryght of patronages be ordeyned i the lawe diuers accyōs for the that be wrōged in that behalfe as writtes of ryght of aduoulon Aſſiſes of daren preſentement Quare impedit & diuers other/ whiche alwaye without / time of mynde haue ben pledyd in the kynges courtes as thinges preteyning to his crowne & roiall dygnytie / and therfore they ſaye that in

this case his lawes ought to be obeyed in lawe and conscience. ¶Doctoure. If it come in variaunce whether he that is so p̄sented be able or nat able be whome shall the abilitie be tried. ¶Studēt. if the ordinarie be nat partie to the accyon it shall be tried be the ordinarie / and if he be partie it shall be tryed be the metropolitane.
¶Doctoure. Than the lawe is more reasonable in that poynt than I thought it had ben but i the other poynt I will take aduisement in it tyll a nother tyme/and I pray the shewe me thy mynde in thy poynt if an abbot name his couent with hym in his presentacyon doth that make the p̄sentacion boyde in the lawe or is the presentacyon good that nat witstādyng. ¶Student. I thynke it is nat boyd therfore but the namyng of theym is boyde & a thyng more thā nedeth/for if the abbot be disturbed he muste bryngе hys accion in hys owne name without the couente.
¶Doctoure. Then I perceyue well that it is nat prohibit in the lawe of Englande but that the abbot may name the couent i his presentacion with hym / and also take theyr assent whom he shall presenet if he wyll / and then I holde it the surest waye

that he so do / for in so doynge he shall nat offēde nother in lawe nor cōsciēce. ¶ Stu dent. To take the assēt of the couēt whome he shall presente and to name them also in the presentacyon/ knowynge that he may do otherwyse bothe i lawe and conscience if he will/ is no offēce. But if he take theyr assent or name them with hym in the pre= sentacyon thinkynge that he is so bounde to do in lawe and conscyence/ settyng a cō= science where none is / and regareth nat the lawe of the realme that wyll dyscharg his conscyence in this behalfe if he will so that he present an able man as he maye do without theyr assent / there is an errour and offence of conscyence in the abbot. And in lyke wise if the abbot presēt i his owne name/ and therfore the couent sayth that he offendeth conscyence i that he obserueth nat the lawe of the churche for that he ta= keth nat theyr assente/ than they offende in iuginge hym to offende/ that offendeth nat And therfore the sure way is i this case to Juge bothe the sayd lawes of suche effecte as they be/ and nat to set an offence of con= science by brekyng of the said decre whiche standeth nat i effecte i this behalfe within this realme.

The.xxvii.Chapitre.

¶ If a man fynde beastes in his grounde doynge hurte/whether may he by his owne auctoritie take them and kepe them tyl he be satysfyed for the hurt.

The.xxvii.Chapitre.

Doctoure.This question is made in the Shime called summa rosella in the title of restytucyō/that is to saye restitucio.xiii.the.ix.article/and there it is answered that he may nat take them for to holde them as aplegd tyll he be satisfied for the hurte:but that he may take them & kepe them tyll he knowe who oweth them that he may therby lerne agaynst whome to haue his remedye. Is nat the lawe of the realme so in lyke wise. ¶ Studēt. No verily / for by the lawe of the realme:he yt in yt case hath the hurte may take the beastes as a dystresse and put them i a pounde ouert so it be within the same shyre/& there let them remayn tyll the owner will make hym amendes for the hurt. ¶ Doctour. what callest thou apound ouerte. ¶ Student. A pounde ouerte is nat onelysuche poundes as be comonly made in townes and lordshyppes for to put in beestes that

be dystreyned / but it is also euery place where they may be i lawfully nat makige the ownour an offēder for ther beyng ther & that it be there also that the owner may lawfully gyue the beestes meate & drike whyle they be i pounde. ¶ Doctor. And if they dye i poūde for lake of mete whose iey pereye is it. ¶ Studēt If it be suche a poū de ouerte as I speke of it is at the peryll of him that owyth the beestes so that he that had the hurte shall be a lybertie to take his accion for the trespas if he wyll & if it be nat a lawfull pounde thē it is at the peryll of hym that dystrayned/and so it is if he driue them out of the shyre And they dye there. ¶ Doctoure. I put case that he that owyth the beestes offer suffycyēt amē des & the other wyll nat take it but kepeth the beastes styll in pounde / may nat the ouer take them out. ¶ Student. No for he may nat be his owne iuge. And if he do an accyon lyeth agaynst hym for brekyng of the pounde / but he must sue a repleuyn to haue his beastes delyuered hym out of pounde/and therupon it shall be tryed by. xu. men whether the amendis that was offred were suffycient or nat/& if it be founde that the offer was nat sufficyent: than he

that hath the hurte shall haue suche amen
des as the.xii.me shall asses. ¶ Doctour
If it be founde by the.xii. men that the a
mendes were suffycent / shall he that re-
fused to take it haue no punysshyment for
his refusell & for kepyng of the beestes in
pounde after that tyme. ¶ Student. I
thynke no/but that he shall yeld damages
in the repleuyn because the yssue is tryed
agaynste hym. ¶ Doctoure. I put case
that the beastes after that refusell dye in
poūde for lacke of meate at whose ieoperdie
is it than. ¶ Student. At the ieoperdie of
him that owid the beastes as it was before
for he is bounde at his peryll by reason of
that wronge that was done at the begyn-
nynge to se that they haue meate as lōge
as they shalbe in poūde: oneles the kynges
writte come to deliuer them & he resisteth
it/for after that tyme it wyll be at his ieo-
perdye if they dye for lacke of meate & the
dammages shalbe recouered in an accion
broughte vpon the statute for disobeynge
the kynges writte.

☞ whether a gyfte made by one vnder
the age of.xxv. yere be good.

The.xxviii. Chapitre.

Doctoure. It appereth in Summa angelica in the title donacio prima the.vii. article that a mā before the age of.xxv.yere may nat gyue without it be with the auctoritie of his tutoure. Is it nat so likewyse at the comon lawe.

¶Student. The age of Infantes to gyue or selle theyr landes & goodes in the law of Englāde at his.xxi.yere/or about/so that after that age the gifte is good/and before that age it is nat good/by whose assent so euer it be/except it be for his meate & drynke or apparell/or that he do it as executour in performaunce of the will of his testatour or in some other lyke cases that nedeth nat to be reherced here/and that age muste be obserued in this realme in lawe & conscience & nat the sayde age of.xxv.yere. ¶Doctoure. I put case it were ordeyned by a decree of the churche yᵗ if any mā by his will bequethe goodes to an other/& willeth that they shalbe deliuered to hym at hys full age & yᵗ i that case.xxv. yere shal be takē for yᵉ ful age shal nat that decree be obserued & stande good after the lawe of Englāde. ¶Studēt. I suppose it shal nat for though it belōge to yᵉ churche to haue yᵉ pbate & yᵉ execucios of testamētz made of goodes & chatels except it be in certayne

lordshypes & seygnories that haue the by
prescripcion/ yet the churche maye nat as
it semeth determine what shalbe the law-
full age for any persone to haue the goodes
for that belõgeth to the kynge & his lawes
to determine / & therfore if it were ordey-
ned by a statute of y^c realme that he shulde
nat in suche case haue the goodes tyll he
were of the age of .xxv. yere that statute
were good & to be obserued as well in the
spirituall lawe as in the law of the realme
& if a statute were good in that case/than a
decree made therof is nat to be obserued/for
the orderynge of the age may nat be vnder
two seuerall powers/& one ꝑtie of euery
good lawe of man is that the maker ex-
cede nat his auctoritie/and I thynke that
the spirituall Juges in that case ought to
iuge the full age after the lawe of the real-
me seynge that the matter of the age con-
cerneth temporall goodes/ & I suppose fur
ther that as the kynge by auctoritie of his
parliament may ordeyne that all wylles
shalbe voyde & that the goodes of euery mã
shalbe disposed in suche maner as by statu
te shulde be assigned : that more stronger
he maye appoynte at what age suche wil-
les as be made shalbe perfourmed. ¶ Not

tonre. Thynkest thou than that the kyng may take awaye the power of the ordinarie that he shall nat call executours to accõpte. ¶ Student. I am somwhat in dout therof/but it semeth that if it myght be enacted by statute that all willes shulde be voyde as is aforesayde: that thã it myght be enacted that no man shulde haue auctoritie to call none to accompte vpon suche willes but suche as the statute shall therin appointe/for he that may do the more may do the lesse/nat withstandynge I wyll nothynge speke determinately in that poynt at this tyme/ne I meane nat that it were good for to make a statute that all wylles shulde be voyde/for I thynke them righte expedient/but myne intẽt is to proue that the comon lawe may ordeyne the tyme of the full age/as well in wylles of temporal thynges as otherwyse/& also that no will shalbe made. And if it may so do: than moche stronger it belongeth to the kynges lawes to interpretate willes concernyng temporall thynges as well whan they come in argument before his Juges: as whã they come in argument before spirituall Juges e that they ought nat to be iuged by seuerall lawes (that is to saye) by the spirituall

iuges in one maner: & by the kinges iuges in another maner.

☞ If a man be conuicte of hereſye before the ordinari/ whether his goodes be forfayth. The .xxix. Chapitre.

DOctoure. It appereth in Summa angelica in the title Donatio prima the .xiii. article/ that he that is an heretyke may nat make executoures / for in the lawe his goodes be forfet / what is the lawe of the realme therin. ¶ Studeut. If a man be conuicte of hereſie and abiure he hath forfet no goodes/ but if he be conuicte of hereſye & be deliuered to laye mẽnes hãdes than hath he forfet all his goodes that he hath at the tyme that he is deliuered to them / thoughe he be nat put in execucion for the hereſye/ but his landes he ſhall nat forfet excepte he be dede for the hereſye / & than he ſhall forfet thẽ to the lordes of the fee/ as in caſe of felonie excepte they be holden of the ordinarie/ for thã the kynge ſhal haue the forfeture/ as it appereth by a ſtatute made the ſeconde yere of kynge Henry the .v. the .viii. Chapitre. ¶ Doctour. Me thynket that as it belongeth onely to

v. L. C. Bract: p: 2: contra

the churche to determine hereſyes/ that ſo it belongeth to the churche to determine what punyſhemēt he ſhall haue for his hereſye/except deth whiche they maye nat be iuges in/ but if the churche decre that he ſhall therefore forfet his goodes me thinketh that they be forfet by that decre.

¶ Student. Nay verely for they be tēporall & belonge to the iugement of the kynges court & I thynke the ordinarie might haue ſet no fine vpon none empeched of hereſye tyll it was ordeyned by the ſtatute of Henry the .viii. that he maye ſet a fyne in that caſe if he ſe cauſe/and than the kynge ſhall haue that fyne as in the ſayde ſtatute appereth.

Where diuers patrons be of an auoulſ & the churche voydeth/ the patrōs varie in theyr preſentrementes/ whether the biſhope ſhall haue liberte to preſent whiche of the encūbētes that he wyll or nat.

The.xxx. Chapitre.

Doctoure. This queſtion is aſked in Sūma roſella i ye title Patron ye .ix. article & there it appereth by the

better oppinion that he may presente whether clerke he wyll / howe be it the maker of the sayde summe / sayth that by the / rigoure of the lawe the bisshope in suche case may presente a straũger because the patrõs agre hat / & in the same chapitre patronus the.xb.article. It is sayde that he muste be preferred that hath the moste merites and hath the mooste parte of the patrons. And if the nombre be egall / that than it is to cõsyder the merites of the patrons & if they be of lyke merite / than maye the bisshop cõmaũde them to agre & to presente agayne. And if they can nat yet agre than the liberte to presente is gyuẽ to the bisshop to take whiche he wyll / & if he may nat yet presente without greate trouble than shall the bisshop order the churche in the beste maner he can / & if he can nat order it / than shal he suspende the churche & take awaye the relikes / to the rebuke of the patrõs / & if they will nat be so ordered than muste he aske helpe of the temporalitie / & in the.xb.article of the sayde title Patron⁹ / It is asked whether it be expedient in suche case that the more parte of the patrõs agre hauyng respecte to all the patrons / or that it suffise to haue the more parte in cõparison of the

lesse parte as thus. There be.iiii. patrons two presente one clerke: the thyrde presenteth another: & the fourth another/he that is presented by.ii. hath nat the more parte in comparison of all patrons for they be egall/but he hath the more parte hauynge respect to the other presentemētes/ to this question it is answered that other the presentement is made of them that be of colage & there is requisite the more parte hauinge respecte to all the colage/or elles euery mā presenteth for hym selfe as comōly do laye men that haue the patronage of theyr patrimony/ & than it suffiseth to haue the more parte in respecte of the other partes/doth nat the law of Englāde agree to these diuersities. ¶ Studēt. No verily ¶ Doctour. what order than shalbe takē in the lawe of Englande if the patrons varie in theyr presentementes. ¶ Student. After the lawes of Englande this order shalbe taken/if they be ioyntenaūtes or tenauntes incomon of the patronage/ & they vary in presentemente the ordinary is nat bounden to admitte none of theyr clerkes nether ye more parte nor the lesse/ & if the bi. monethes passe or they agree thē he may present by the laps. But he may nat presēt

Wythin the.vi. monethes / for if he do they
maye agre & bryngе a Quare impedit a-
gaynste hym/& remoue his clerke/ & so the
ordinarie shalbe as dystourboure. And if ye
patrons haue the patronage by dyscēte as
coperceners than is the ordinarie bounde
to admitte the clerke of the eldest syster for
the eldest shall haue the preferment in the
lawe if she wyll / & than at the nexte auoy-
daunce the nexte syster shal present & so by
turne one syster after another tyll all the
systers or theyr heyres haue presented/ and
than the eldest syster shall begyn agayne/ &
this is called a presentynge by turne / & it
holdeth alway betwene coperceners of an
aduouson/excepte they agre to presēt togy
der/or that they agre by cōposicion to pre
sente in some other maner / & if they do so
that agrement muste stāde /but this must
be alway excepte that if at the fyrste auoy
daunce that shalbe after the dethe of the co
mon auncestre the kynge haue the warde
of the iongest doughter/that thā the kyng
by his prerogatiue shall haue the presente
ment. And at the nexte auoydaūce the el-
dest syster & so by turne. But it is to vnder-
stande that if after the dethe of the comon
aūcestre the churche voydeth & the eldest sy

ster presented togyder with another of the systers/ & the other systers euery one i theyr owne name or togyder that in yᵗ case the ordinarie is nat bounden to receyue none of theyr clerkes but may suffre the churche to renne in to the lapas as it is sayd before for he shall nat be bounde to receyue the clerke of the eldest syster but where she presenteth in her owne name. And in this case where the patrones varye in presentement the churche is nat properlye sayd lettigiouse so that the ordinarie shuld be bounde at his perill to directe a writte to enquere (de Jure patronatus) for that writ lieth where two presente by seuerall titles / but these patrõs present all in one title/ & therfore the ordinarie maye suffre it to passe if he wyll in to the laps/ & this maner of presentemẽtes muste be obserued in this realme in lawe & conscience.

☞ Howe lõge tyme the patron shal haue to presente to a benefice.

The.xxxi.Chapitre.

Doctoure. Thys questiõ is asked i Sũma ãgelica i yᵉ title Jus patronat⁹ the.xvi.article/ & there it is ãswered

that if the patron be a lay mā that he shall haue .iiii. monethes / & if he be a clerke he shall haue. vi. monethes. ¶ Student. And by the comon lawe he shall haue. vi. monethes whether he be a lay man or a clerke/ I se no reason why a clerke shulde haue more respite than a lay mā: but rather the contrary. ¶ Doctour. Fro what tyme shal the. vi. monethes be accōpted. ¶ Studēt. That is in diuers maners after the maner of the voydance / for if the churche voyde by dethe/ creacion/ or cession: the. vi. monethes shalbe cōpted fro the dethe of the encumbent / or fro the creacion / or cession / wherof the patron shalbe cōpelled to take notice at his peryll/ & if the voydance be by resignacion or depriuacion: than the. vi. monethes shall begyn whan the patron hath knowlege gyuen hym by the bisshop of the resignacion or depriuacion. ¶ Doctour. what if he haue knowlege of the resignacion or depriuacion & nat by the bisshope but by some other / shall nat the syre monethes begyn: thā fro the tyme of that knowlege. ¶ Student. I suppose that it shall nat begyn tyll he haue knowlege gyuen hym by the bisshope. ¶ Doctour. An vnion is also a cause of voydaunce howe

shall the.vi.monethes be rekened there.
¶ Studēt. There can no Union be made but the patrons muste haue knowlege/ & it muste be apoynted who shall presente after that vnion/that is to saye/ one of them or bothe/ eyther ioitly or by tunre one after a nother as the agrement is vpon the vniō/ & sythe the patron is priuy to the auoidāce & is nat ignorante of it: the.vi. monethes shalbe accompted fro the agremente.
¶ Doctour. I se well by the reason that thou haste made in this chapitre that ignorauuce sōtyme excuseth in the lawe of Englande/for in some of the sayde auoydaunces it shall excuse the patrones as it appereth by thy reasons aboue/ & in some it shal nat/ wherefore I pray the shewe me somwhat where ignorāce excuseth in the lawe of Englande & where nat after thyne oppinion. ¶ Student. I wyll with good wil here after do as thou sayste if thou put me in remembraūce thereof. But I wolde yet moue the somwhat ferther in suche questions as I haue moued the before/ concernyng the diuersities betwene the lawes of Englāde & other lawes/for there be many mo cases therof that as me semeth haue nyght greate nede for the good order of com-

science of many persons to be reformed & to be brought in to one opynion both amonge spirituall & tẽporall / as it is in the case where doctours holde opinion that ye statutes of laymen that restrayne libertie to gyue landes to the churche shulde be voyde / & they saye ferther that if it were prohibit by a statute that no gyfte shulde be made to foreyns / that yet a gifte made to the churche shulde be good / for they say that the inferiour may nat take away the auctoritie of the superiours & this sayeng is directly agaynst the statutes whereby it is prohibit that landes shulde nat be gyuẽ in to mortmayne / & they say also yt byques & gyftes to the churche muste be determined after the lawe canon & nat after the lawes & statutes of lay mẽ / & so they regarde moche to whome the gifte is made whether to the churche or to make causes / or to comõ persones / & bere more fauoure in giftes to the churche than to other / & the law of the realme beholdeth the thyng that is gyuen & pretendeth that if the thynge that is gyuen be of landes or goodes that the determinacion therof of right belõgeth in this realme to ye kynges lawes whether it be to spirituall mã or tẽporal / to ye chur

che or to other/ & so is greate diuisiō in thys behalfe whan one preferreth his opiniō & another his/ & one this iurisdiccion/ & another that & that as it is to fere more of singularitie thā of charite wherfore it semeth that they yᵗ haue the greatest charge ouer the people/ specially to the helthe of theyr soules/ are moste bounde in conscience before other to loke to this matter & to do yᵗ in them is in all charitie to haue it reformed/ nat beholdynge the tēporall iurisdiction nor spirituall iurisdiccion but the comon welthe & quietenes of the people/ and that vndoutedly wolde shortlye folowe if this diuisiō were put away/ whiche I suppose verylye wyll nat be but that all men within the realme bothe spirituall & tēporall be ordered & ruled by one lawe as to tē porall thynges nat withstandynge for as moche as the purpose of this writtyng is nat to treate of this matter therfore I wil no ferther speke thereof at this tyme.

¶ Doctoure. Than I praye the procede to another question as thou sayst thy mynde is to do. ¶ Student. I wyll with good wyll.

The.xxxii.Chapitre.

☞ If a man be excõmenged / whether he may in any case be assoyled without makynge satisfaccio.

The.xxxii.Chapitre.

STudent. In the summe called Sūma rosella in the title absolucio quarta pe ferounde article: it is sayd that he that is excõmunicate for a wronge if he be able to make satisfaccion ought nat to be assoyled but he do satisfy / & that they offende yt do assoyle hym / but yet neuertheles he is assoyled / and if he be nat able to make amendes that he muste yet be assoyled / takynge a sufficiente gage to satysfie yt he be able here after / or elles that he make an othe to satisfie if he be able. And these sayenges in many thynges holde nat in the lawes of Englande. ¶ Doctoure. I pray the shewe me wherin the law of the realme varieth therfro. ¶ Studēt If a man be excommunicate in the spirituall courte for det/trespas/or suche other thynges as belong to the kynges crowne & to his royall dignite there he oughte to be assoyled without makynge any satisfaccion/for the spirituall courte exceded they?

powꝛ in that they helde ple in thole caſes
& the party if he wyll may therupon haue
a ꝓemuntre facias as well agaynſte the
partye that ſued hym as agaynſt the iuge
& therfoꝛe in this caſe they oughte in con-
ſcience to make abſolucion without any
ſatiſfaccion/foꝛ they nat onely offẽded the
party in callynge hym to anſwere beforꝛe
thẽ of ſuche thynges as belong to the law
of the realme:but alſo the kynge/foꝛ he by
reaſon of ſuche ſutes maye leſe greate ad-
uauntages by the reaſon of the wꝛittes oꝛi
ginals/iudicials/fynes/amercyamentes/&
ſuche otheꝛ thynges as mighte growe to
hym if ſuche ſutes had bẽ takẽ in his cour
tes accoꝛdynge to his lawes/ & accoꝛdyng
to his ſaynge:it apperet in diuers ſtatutes
that if a man laye violent handes vpon a
clerke & bete hym/that foꝛ yᵉ betynge amẽ
des ſhalbe made in the kynges court/ & foꝛ
the layeng of violent hãdes vpõ the clerke
amendes ſhalbe made in the coarte criſtiẽ.
And therfoꝛe if the iuge in the court criſtiẽ
wolde awarde the partie to yeldẽ damages
foꝛ the betynge: he dyd agaynſte the ſtatu-
te/ but admitte that a man be excommen-
ged foꝛ a thynge that the ſpirituall courte
may awarde the party to make ſatiſfaccio

ol/as for the nat inclosinge of the churche
yarde/or for nat apparellige of y^c churche
conuenientlỹ. Than I thynke the partye
muste make restitucion or lay a sufficiente
caution if he be able or he be alloyled / but
if the partye offre sufficient amẽdes & haue
his absolucion / & the iuge wyll nat make
hym his letters of absolucion if the excom
mengemente be of recorde in the kynges
courte thã the kynge may writte vnto the
spirituall iuge cõmaundyng hym that he
make the party his letters of absolucion
vpon payn of a contempte/& if the sayd ex-
communicaciõ be nat of recorde in y^c kyn-
ges courte than the partye maye in suche
case haue his accion agaynst the Juge spi
rituall for that he wolde nat make hi his
lettres of absolucion but if he be nat alloy
led or if he be nat able to make satisfaccion
& therfore the iuge spirituall wyll nat al-
soyle hym / what the kynges lawes maye
do i tha case I am somwhat in doute/ and
wyll nat mochе speke of it at this tyme/
but as I suppose he may as well haue his
accion in that case for the nat alloylynge
hym as where he is alloyled & that y^c In-
ge will nat make hi his letters of absolu-
cion/& I suppose the same law to be where

a mā is accursed for a thyng that he iuge had no power to accurse hi in/as for dette/ trespasse/or suche other. ¶ Doctor. There he may haue other remedies as a premunire facias or suche other/& therfore I suppose y^e other accīō lieth nat for hi. ¶ Student. The iuge & the partie may be ded/& thā no premunire lieth/& though they were alyue & were cōdēpned in a Premunire/ yet that shulde nat auoyd the excōmengement/& therfore I thynke the action lieth specially if he be therby delayed of actions that he might haue in the kynges court if the sayd excōmengement had nat ben.

☞ whether a Prelate may refuse a legaci. The.xxxiii.Chapitre.

STudēt. It is moued in y^e sayd summe named Roscila in the title alienacio. xx.the.xi.article whether a Prelate may refuse a legaci/ where in diuers opynions be recited there/ whiche as me thynketh haue nede after the lawes of the realme to be more playnly declared. ¶ Doctoure. I praye the shewe me what the law of the realme will therin. ¶ Studēt. I thinke y^t euery Prelate & suffereyn that may onely sue

& be fuyd in his owne name as Abbates. Priours: & suche other may refuse any le-gacy that is made to the house: for the lega-cie is nat perfyte tyl he to whome it is ma-de assent to take it: for els if he myghte nat refuse it he might be compelled to haue la-des wherby he myghte in some case haue greate losse but than if he intende to refuse he muste as sone as his title by the legacy falleth relinquisshe to take the profites of the thyng bequethe/for if he ones take the profites therof he shall nat after refuse the legacy: but yet his successour may if he will refuse the takynge of the profites to saue the house fro yeldynge of damages or fro arrerages of rentes if any suche be: & lyke lawe is of a remaynder as is in legacy: for though in the case of a remainder & also of a deuise as moste men say the freholde is caste vpon hym by the lawe whan the re-mayndre or deuise falleth: yet it is in his li-bertie to refuse the takynge of the profites & to refuse the remaidre or deuise if he wyll as he myghte do of a gyfte of landes or goodes for if a gyfte be made to a man that refuseth to take it / the gyfte is voyde: & if it be made to a man that is ab-sent the gifte taketh nat effecte in hym tyll

he assent: no more than if a mā dissease one to another mānes vse/ he to whose vse the dissesion is made hath nothyng in that lā de ne is no dissesioure tyll he agre. And to suche dissesions & gyftes an Abbot or Pri our may disagre as well as any other mā but after some men a Bisshope of a denise or remaynder that is made to the Bisshop & to the deane & chapitre nor a deane and a chapitre of a deuise or remaynder made to thē ne yet the mayster of a colage of suche a deuise or remaynder made to hi & to his bretherne/ maye nat disagre without the chapitre or bretherne for the Bisshoppe of of suche landes as he hath with the deane & chapitre: ne the deane nor mayster: of suche lande as they haue with the chapitre or bretherne may nat answere without y^e chapitre & bretherne: & therfore some saye that if the deane or mayster wyll refuse or disclayme in the landes that they haue by thē deuise or remaindre that that disclaymour without the chapitre or bretherneis boyde. And therfore it is holdē in the law that if a Bisshope be vouched to warrātie & the tenaunt byndeth hi to the warrā tye by reason of a leale made to hym by y^e Bisshope & by the deane & the chapitre yelding

a ſcente / that in that caſe the Biſchoppe may nat diſclayme in that reuercion with out the aſſent of the deane & chapitre. But yet if a reuercion were graũted to a deane & a chapitre & the deane refuſe/ the graunt is voyde/ & ſo it appereth that a deane may refuſe to take a gyfte or graunte of landes or goodes or of a reuercion made to hym & to the chapitre & that yet he maye nat diſagre to a remaĩdre or deuiſe/ & the diuerſite is becauſe the remaynd're & deuiſe be caſte vpon hym without any aſſent / wherunto nether the deane nor the chapitre by them ſelfe maye in no wyſe diſagre without the aſſent of the other/ but a gifte or graũt is nat good to them without they bothe aſſẽt & in ſuche giftes as I ſuppoſe an Infaunt may diſagre as well as one of full age/ but if a woman couert diſagre to a gifte & the huſbande agre that gyfte is good. ¶ Doc toure. What if the landes in that caſe of a man & his wyfe be charged with damages or be charged with more rent than the lan de is worthe/ & the huſbande dye ſhall the wyfe be charged to the damages or to the rent. ¶ Studẽt. I thynke nay if the wyfe refuſe the occupacion of the grounde after her huſbande deth / & I thynke the ſame

lawe to be if a lease be made to the husban
de & to the wyfe yelding a greater rent than
the lande is worth that the wyfe after the
husbandes dethe maye refuse the lease to
saue her fro the payment of the rente / & so
may y^e successour of an Abbot. ¶Docto.
And if the husbande in that case ouerliue
the wyfe & than make his executours and
dye/whether may his executours in lyke-
wyse refuse the lease. ¶Student. If they
haue goodes sufficient of theyr testatoure
to pay the rente I thynke they may nat re
fuse it/but if they haue no goodes sufficient
of theyr testatours to pay the rente to the
ende of the terme / I thynke if they relin-
quisshe the occupacion they may by special
pleedynge discharge them selfe of the rent
and the lease/ and if they do nat they may
lightly charge them selfe of theyr owne
goodes. And if a lease be made for terme
of lyfe the remaynder to an Abbot for
terme of the lyfe of Johan at style / re-
seruynge a greater rente than the lande
is worthe / and after the tenaunte for terme
of lyfe dyeth the Abbot may refuse the
remaynder for the cause before rehersed /
and in case that the Abbot assent to the re-
maynder wherby he is charged to y^e rētdr

tynge the tyme that is Abbot / & after he dyeth or is deposed duryng the sayd Johañ at style/ in that case his successoure maye discharge hym selfe by refusinge the occupacion of the lande as is aforesayd. But I thynke that if suche a remaynder were made to a deane/ & to the chapitre/ & the deane agree without the assent of the chapitre yᵗ in that case the deane & the chapitre maye afterwarde disagre to the remaynder: and that the acte of the deane without yᶜ assẽt of the chapitre shall nat charge the chapitre i yᵗ behalfe/ & thus it appereth though the meaninge of the sayde chapitre & article in the sayde summe be / that a prelate may nat disagre vnto a legacie for hurtinge of the house/ yet he may after the lawes of the realme disagre thereto where it shulde hurte his house. And if in a Precipe quod reddat there be but one tenaunt be he spirituall or temporall / & he refuse by waye of disclaymoure in suche case where he maye disclayme by the lawe/ there the lande shal veste in the demaundaunt/ & if there be two tenauntes than it shall veste in his felowe/ if he wyll take the hole tenaũcie vpon him or els it shall veste in the demaundaunte. But if an Abbot or a laye man refuse the

takynge of the profites / & shewe a speciall cause why it shulde hurte hym if he dydde assente & be therby discharged as is sayde before/ In whome the lande shall than veste it is more doute whereof I wyll no ferther speke at this tyme. And thus it appereth by diuerse of the cases that be put in this chapitre that he that is ignoraunt in the lawe of the realme/ shall lacke the true iugement of conscience in many cases/ For in many of these cases that that maye be done therein by the lawe muste also be obscrued in conscience. &c.

☞ whether a gyfte made vnder a condicion be voyde if the souerayne onely breke the condicion .*.

The.xxxiiii. Chapitre.

STudent. In Sūma rosella in the title alienacio/ the.xii. article is asked this question whether a gyfte made vnder a certayne forme may be auoyded or reuoked because the prelate or souereyne onely dyd breke the forme/ & it is there answered that it may nat for that the dede of the prelate onely ought nat to hurte the churche/ & if those wordes vnder a mauer be vnder-

ſtaude of a gyfte vpon condicion as they ſeme to be/than the ſayd ſolucion holdeth nat in this realme nether in lawe nor conſcience. ¶ Doctour. what is than the law of Englande if a man enfeffe an Abbot by dede intented vpon condicion that if the Abbot paye nat to the feffoure a certayne ſome of money at ſuche a daye/that than it ſhalbe lawfull to the feoffour to reentre/ & at yᵗ day yᶜ Abbot fayleth of his paymẽt may the feoffer lawfully reentre & put out the Abbot. ¶ Student. ye verely for he had no right to the lande but by the gyfte of the feffour & his gyfte was condicionell & therfore if the condicion be broken it is lawfull by the lawe of Englãde for the feffoure to reentre & to take his lande agayn & to holde it as in his fyrſt eſtate by which reentre after the lawes of the realme he diſproueth the fyrſte lyuerey of ſeaſon & all the meane actes done betwene the fyrſt feffement & the reẽtre/& it forceth litle in the lawe in whome the defaute be that the cõdicion was nat performed whether in the Abbot or in his conuẽt or i bothe/or in any other perſone what ſo euer he be: except it be in the feffoure hi ſelfe. And it is great diuerſitie betwene a clere gyfte made to an

Abbot without cõdiciõ/& where it is made with cõdictõ/for whan it is made without cõdiciõ the acte of the Abbot onely shalnat by the comõ lawe dischcrite the house but it be in very fewe cases/ but yet vpon diuers statutes the sufferaũce of the Abbot onely maye dischcrite the house as by his cesser/ or by leuieng of a crosse vpõ a house agaiſt the statute therof made/in whiche case the house therby shall lese the lãde/ & some say that by the comon lawe vpon his disclaymour in auourie a writ of right of disclamour lieth/ but if the gyfte be vpon condicion it standeth nether with law nor cõsciẽce that the Abbot shulde haue any more perfite or sure estate than was gyuen vnto hi/& therfore as the sayd estate was made to the house vpõ cõdiciõ so that estate may be auoyded for nat performyng of the cõdicion/& I thynke verily y^t this that I haue sayd is to beholdẽ in this realme bothe in lawe & conscience/& that the decrees of the churche to the contrari bynde nat in thys case. But if lãdes be gyuen to an Abbot & to his couẽt to the intẽt to fynde a lãpe/ or to gyue certayne almes to poore mẽ/ thoughe the intẽt be nat in those cases fulfilled/ yet y^e scoffer nor hys heyres may nat reẽtre

for he reserued no reentre by expresse wor-
des/ne in the wordes whā he sayth the en
tente to fynde a lampe or to gyue almes,
&c. Is implyed no reentre/ne the feoffoure
nor his heyres shall haue no remedye in
suche cases/onelesse it be within the case of
the statute of westmynster the secōde that
gyueth the Cessauit de cantaria.

☞ whether a couenaūt made vpō a
gyfte to the churche that it shall
nat be aliened (be good.)
The.xxxv.Chapitre.

STudent. In the sayde summe called
Summa roscella in the sayde title alie
nacio/the.xiii.article is asked thys que
stion/whether a couenaunt made vpon a
gyft to the churche that it shall nat be alie
ned be good. And the same question is mo
ued agayne in the sayd summe called rosel
la/in the title condicio the fyrst article & in
Summa angelica/in the title Donatio pri
ma/the.li.&.lii.articles/& the intēte of the
question there is: whether nat withstan-
dynge that the condicion be good to some
alienacions whether that yet it be good to
restrayne alienacions for the redemption

of them that be in captiuite vnder the infi deles or for the greater aduauntage to the house/& though the better opinió be there that the condicion may nat be broken for redempcion of them that be in captiuite: yet it is in maner a hole opinió that it may be solde for the greater aduauntage to the house/for it is sayd there that it maye nat be taken but that the intente of the gyuer was so/& therfore they calle the condicion that prohibiteth it to be solde(condicio turpis)that is to saye/a vyle condicion / wherfore they regarde it nat:but verilie as I take it if a condicion may restrayne any maner of alienacion than it shall as well restrayne alienacions for the two causes before reherced as for any other causes / and thoughe me thynketh that that condicion is good after the lawes of the realme that vpon giftes to the church restrayneth alienacions: yet I shal touche one reason that is made to the cõtrary/that is this. There is a clere grounde in the lawe that if a feoffement be made to a comon person in fee vpon condicion that the feoffe shal nat alie to no man : that that condicion is voyde because it is contrary to the estate of a fee simple to bynde hym that hath that estate

that he shulde nat alienе if he lyste / & some say that an Abbot that hath lande to hym & to his successours hath as hygh & as perfite a fee simple as hath a laye mā yt hath lande to hym & to his heyres /and therfore they say that it is as well agaynst the law of the realme to prohibit that the Abbot shall nat alien as it is to prohibit a lay mā therof/ & though it be therein true as they say as to the hyghnes of the estate: yet me thynketh there is great diuersite betwene the cases concernyng theyr alienaciōs/for whan landes be gyuen in fee simple to a comon person:the intēt of the lawe is that the feoffe shall haue power to alienе/& if he do alienе it is nat agaynst the intēt of the lawe ne yet agaynst the intēt of the feoffer/ but whan landes be gyuen to an Abbot & to his successours the intent of the lawe is & also of the gyuer as it is to presume that it shulde remayne in the house for euer / & therfore it is called mortmayne/that is to saye a ded hāde as who saythe that it shall abyde there alway as a thynge ded to the house.And therfore as I suppose the lawe will suffre yt cōdiciō to be good yt is made to restrayne that suche mortmayne shulde nat be alienedе & that yet it may yhibit the

same cõdicion to be made vpon a feoffemẽt made in fee simple to a mã & to his heyres for that is the moste hyghe/the moste free & the moste pureste state that is in the law. But the lawe suffreth suche a condicõ be made vpon a gyfte in tayle because the statute prohibiteth that no alienacion shulde be made therof. And than as the law suffereth suche a condicion vpõ a gyfte in mort mayne/that is to saye / that it shall nat be aliened/to be good/than it iugeth the condicõ also accordyng to the wordes/that is to say/if the cõdicion be generall that they shall aliene to no man as this case is that it shalbe taken generaly accordynge to the wordes/& it shall nat be takẽ yᵗ the intẽtof the gyuer was otherwyse thã he expressed in his gift though percase if he were alyue hym selfe & yᵉ questiõ where asked hi whether he wold be cõtẽted it shuld be aliened for yᵉ sayd two causes or nat/he woldẽ saye/but whã he is ded no mã hath authorite to interpretate his gyft otherwise thã yᵉ law suffereth /ne otherwyse thã yᵉ wordes of yᵉ gift be. And if yᵉ cõdicõ be special yᵗ is to say/that the lãde shall nat be aliened to suche a mã or such a mã/thã the cõdicõ shalbe takẽ accordyng to the wordes/& thã

they may be alienedas for that condicio to any other but to them to whome it is expresselie prohibite that the lande shuld nat be alienedto. And if the lādes in that case be alienedto one that is nat excepte in the condicion/than he may alienethe lande to hym that is fyrste excepted withoute breakynge of the condicion / for condicions be taken straytely in the lawe & without equitie. And thus me thynketh that becausethe sayde condicion is generall & restreyneth all alienacions/that it may nat be alienednether by the lawe of the realme ne yet by conscience/no more for the sayd two causes than it may for any other cause/& this case muste of necessitie be iuged after the rules & groundes of the law of the realme & after no other lawe as me semeth.

☞If the patrone present nat within .vi. monethes who shall presente.

The.xxxvi.Chapitre.

STudent. In the sayde summe called Summa rosella in the title Beneficiū in principio it is asked/ if the patrone present nat within.vi.monethes who shal present & within what tyme the presente.

ment muste be made. And it is answered there that if the patrō present nat within vi.monethes that the chapitre shall haue. vi.monethes to pſent/ & if the chapitre present nat within.vi. monethes that thā ye Bisshope shall haue other.vi. monethes. And if he be necligent/ than the Metropolitane shall haue other.vi. monethes / & if he present nat than the presentement is deuolute to the Patriarke. And if the metropolitane haue no superiour vnder the Pope/than the presentemēt is deuolute to the Pope. And so as it is sayde there the archebisshope shall supplye the necligence of the Bisshope if he be nat exempte/ & if he be exempte the presentement immediatly shall fall fro the Bisshope to the Pope. An as I suppose these diuersities holde nat in the lawes of the realme. ¶ Doctour. Thā I pray the shewe me who shall present by ye lawes of the realme if the patron do nat present within his.vi.monethes. ¶ Studēt. Than for defaute of the patrone the Bisshope shall present /oneles the kyng be patrone/ & if the Bisshop present nat withī vi.monethes/than the metropolitane shal present whether the Bisshope be exempte or nat. And if the metropolitane presente

nat within the tyme limitted by the lawe/ than there be diuers oppinions who shall present/for some say yᵗ the Pope shall present/as it is sayd before/& some say yᵉ kinge shall present. ¶ Doctoure. what reasō make they that say the kyng shulde present in that case. ¶ Studēt. This is theyr reason they saye that the kynge is patrone peramounte of all the benifices within the realme. And they say further that the kynge & his progenitours kinges of Englāde without tyme of mynde haue had authoritie to determine the right of patronages in this realme in theyr owne courtes/ & are bounden to se theyr subiectes haue right in that behalfe withi the realme/ & that in that case fro hym lieth no appele. And than they say that if the Pope in this case shulde present that than the kynge shulde nat onely lese his patronage peramounte/but also that he shulde nat somtyme be able to do right to his subiectes. ¶ Doctoure. In what case were that. ¶ Student. It is in this case/the lawe of the realme is/ that if a benefice falle voyde/ that yᵉ patrone shal present within.vi.monethes: & if he do nat that thā the ordinarie shal pſent but yet yᵉ law is ferther i yᵗ case that if the patrō pre

sente before the ordinari put in his clerke: that thā the patrō of right shal inioye his presentement/& so it is/ thoughe the tyme shulde fall after to the metropolitane or to the Pope/ & if the presentement shulde fall to the Pope / than thoughe the aduouson abode styll boyde/so that ye patrone might of right present/yet the patrone shulde nat knowe to whome he shulde present /oneles he shuld go to the Pope/& so he shuld fayle of right within the realme. And if percase he wente to the Pope & presented an able clerke vnto hym/& yet his clerke were refused & another put in at the collacīō of the Pope or at the presentement of a straūger yet the patrone coulde haue no remedie for that wrōge within the realme / for the encumbente myghte abyde stille out of the realme. And therfore the lawe wyll suffre no title in this case to fall to the Pope.

And they say that for alyke reasō it is that the law of the realme will nat alowe an excōmengemēt that is certified in to the kynges court vnder ye popes bulles. For if the partie offered sufficiēt amēdes/& yet coulde nat obteyne his letters of absolucion / the kynge shulde nat knowe to whome to writ for the letters of absolucīō/and so the par-

tie coulde nat haue righte/ & that the lawe wyll in no wyse suffre. ¶ Doctoure. The patrone in that case may present to the ordinarie as longe as the churche is voyde/ & if the ordinarie accepte hym nat/ the patrone may haue his remedie agaynst hym within the realme. But if the Pope wyll put in an encumbēt before the patrone present/it is reason that he haue the preferme te as me semeth before the kynge. ¶ Student. whan the ordinarie hath surcessed his tyme he hath loste his power as to y' presentement / specially if the collacion be deuolute to the pope. And also whan the presentement is in the Metropolitane he shall put in the clerke hym selfe & nat the ordinarie/& so there is no defaute in the ordinarie thoūgh he present nat the clerke of the patrone if his tyme be past / & so there lieth no remedie agaynst hym for the patrone. ¶ Doctour. Though the encumbēt abyde styll out of the realme yet maye a Quare impedit lye agaynste hym within the realme/& if the encūbent make defaute vpon the distresse & appere nat to shew his title: than the patron shall haue a writt to the Bisshope accordyng to the statute/& so he is nat without remedy. ¶ Studēt. But

in this case he can nat be sommoned / attached/nor distrayned/within the realme.
¶ Doctoure. He maye be somoned by the churche as the tenaunt may in a writte of right of auouson. ¶ Student. There the auouson is in demaunde/& here the presentement is onely in debate / & so he can nat be somoned by the churche here no more than if it were in a writte of annuitie/ and there the comon returne is (quod clericus est & beneficiatus non habens laicum feodum vbi potest summoniri). And thoughe he might be somoned in the church/yet he might nether be attached nor distrayned there/& so the patrone shulde be without remedie. ¶ Doctoure. And if he were without remedie/he shulde yet be in as good case as he shulde be if the kyng shulde present/ for if the title shulde be gyuen to the kynge the patrone had lost his presentement clerely for y^t tyme though the churche abyde styll voyd. For I haue herde saye that in in suche presentementes no tyme after the lawe of the realme renneth vnto the kyng ¶ Studēt. That is true/ but there the presentement shulde be takē fro hym by right & by the lawe & here it shulde be taken fro hym agaynst the lawe/& there as the lawe

coulde nat helpe hym & that the lawe wyll nat suffre. ¶ Doctoure. yet me thynketh alway yᵗ the title of the laps i such case is gyuen by the lawe of the churche & nat by the tẽporall lawe / & therfore it forseth but littell / what the temporall lawe wyll in it as me semeth. ¶ Student. In suche countreys where the ℘ope hath power to determine the righte of temporall thynges I thynke it is as thou sayest/but in this realme it is nat so. And the righte of presentement is a temporall thynge & a temporall enheritaunce/& therfore I thynke it belongeth to the kynges lawe to determine / & also to make lawes who shall present after the.vi. monethes/as wel as before/so that the title of examinacion of abilitie or none abilitie be nat therby taken fro the ordinaries/& in lykewise it is of auoydaũce of benefices/that is to say / that it shalbe iuged by the kynges lawes whan a benefice shal be sayd voyde & whã nat/& nat by the law of the churche as whan a person is made a Bisshope or accepteth another benefice without licẽce / or resigneth/ or is deprined in these cases the comõ law sayth that the benefices be voyde & so they shulde be though a law were made by the churche to the

cõtrary / & so if the ꝑope shulde haue aüy title in this case to ꝓsent / it shulde be by the lawe of the realme. And I haue nat sene ne herde that the lawe of the realme hath gyuẽ any title to yᵉ ꝑope to determine any ẽporall thyng that may be lawfully determined by the kynges court. ¶ Doctoure. It semeth by that reason that thou haste made nowe that thou ꝓferrest the kynges authoritie in ꝓsentemẽtes before the ꝑopes / & that me thynketh shulde nat stande with the lawe of god: syth the ꝑope is the vicar generall vnder god. ¶ Studẽt That I haue sayd ꝓueth nat that / for yᵉ hyghest ꝓfermẽt in ꝓsentemẽtes is to haue authoritie to examine the abylitie of the person that is ꝑsented / for if the ꝓsent be able / it suffiseth to the discharge of the ordinarie / by whome so euer he be ꝑsented & that authoritie is nat denied by the lawe of the realme to belõge alwaye to yᵉ spirituall iurisdiccõ / but my meanyng is that as to the right of ꝓsentementes & to determine who ought to ꝓsent & who nat & at what tyme / & whã the churche shalbe iuged to be voyde & whã nat / belõgeth to the kyng & his lawes / for elles it were a thing in vayne for him to holde ple of aduousons

or to determine the right of patronage in his owne courtes & nat to haue auctho̅rite to determyne the right therof/& these clay mes semeth nat to be agaynste the lawe of god. And so me semeth in this case the pre sentement is gyuen the kynge. ¶ Doctor. And if the kynge shulde haue right to pre= sent than might the churche happen to cō tinue voyde for euer for as we haue sayde before no tyme renneth to the kyng in su= che presentementes. ¶ Student. If any suche case happen if the kynge present nat than may the ordinary set in a deputie to seruc the cure as he may do whā necligēce is in other patrons that may present & do nat/& also it can nat be thoughte that the kyng whiche hath the rule & gouernaūce ouer the people nat onely of theyr bodyes but also of theyr soules wyll hurte his con science & suffre a benefice continually to stande without a curate no more than he doth in auousons that be of his owne pre= sentemente.

☞ whether the presentement & collacio̅ of all benefices & dignities voydynge at Rome belonge onely to the Pope The.xxxvii. Chapitre.

STudent. In the sayde summe called Summa rosella in the title Beneficiū primum/i the.xiii.article. It is sayde that benefices/dignities/& psonages/voydynge in the courte of Rome maye nat be gyuen but by the Pope & likewyse of the Popes seruauntes & of other that come & go fro the courte if they dye in places nye to the court within two dayes iourney all these belonge to the Pope/but if the Pope presente nat within a moneth: than after the moneth they to whome it belōgeth to present may present by them selfe onely or by theyr vicar generall if they be in farre parties & these saynges holde nat in the lawes of the realme. ¶ Doctoure. what is the cause that they holde nat i this realme as well as in all other realmes. ¶ Studēt One cause is this. The kyng i this realme accordyng to the aūciēt right of his crowne/of all his aduousons that be of his patronage oweth to present. And in likewise other patrons of benefices of theyr presentement/& the plee of the right of presentementes of benefices within this realme belonge to the kyng & his crowne. And these titles can nat be taken fro the kynge & his subiectes but by theyr assent/& so the lawe

that is made therin to put away that title
byndeth nat in this realme/ & ouer that be
fore the statute of.xxv.of Edwarde the.iii
there was a great inconuenience & mischief
by reason of diuers prouisions reseruacions
that the Pope made to benefices in thys
realme cõtrari to the olde right of y^e kyng
& other patrons in this realme as well to
archebishoprykes/Bishopryches/deane-
ries/& Abbes: as to other dignities & bene
fices of the church. And many tymes alien
therby had benefices within the realme y^t
vnderstode nat the englisshe tonge/so that
they coulde nat counsayle nc comforte the
people whan nede required/& by that occa
sion great ryches was cõuayed out of the
realme/wherfore to auoyde suche inconue
niences: it was ordeyned by the sayd statu
te that all patrõs as well spirituall as tẽ-
porall shulde haue theyr presentemẽtes fre
ly/& in case y^t collacio or prouisiõ were ma
de by the Pope in disturbaũce of any spiri
tuall patrõ: that thã for that tyme the kig
shulde haue the pscutemẽt/& if it were i dis
turbaũce of any lay patrõ: that thã if the
patrõ pscuted nat within the halfe yere af
ter suche voydãce: nor the Bishope of the
place within a moneth after the halfe yere

that thā the kyng shulde haue also the plen
tement/& yᵗ the kyng shulde haue the profi
tes of the benefices so occupied by prouisiō
except abbes & priours & other houses that
haue colage & couēt/& there the colage & co
uēt to haue the profites/& bycause the sta-
tute is generall & excepteth nat suche bene
fices as shall voyde in the courte of Rome
or in suche other place as before appereth/
therfore they be takē to be withi the prou
siō of the sayd estatute as well as the bene
fices that voyde withi the realme/& all pro
uisours & executours of the sayd collaciōs
& prouisiōs & al theyr atturneys/notaries/
& mainteners shalbe out of the protecciō of
the kyng/& shall haue like punishemēt as
they shulde haue for executing of benefices
voyding withi the realme. ¶ Docto². But
Icā nat se howe the sayd statute may stāde
with cōscience that so farre restrayneth the
Pope of his libertie/whiche as me semeth
he ought i this case right to haue. ¶ Stu
dēt. Because as I suppose patrōs ought
of right to haue theyr plentemētes vnder
suche maner as they clayme thē in thys real
me as I haue sayd before/ & as in the.xxvi
chapi. of this boke appereth more at large
& also for as moche as it apereth euidētly

that greate inconuenient folowed vpō the sayd prouisions / & that the sayde estatute was made to auoyde the same/ which syth that tyme hath ben suffred by the ꝑope & hath ben alway vsed in this realme without resistaunce that the sayde estatute shulde therfore stāde with good conscīēce.

☞ If a house by chaunce falle vpon a horse that is borowed who shall bere the losse .*.

The.xxxviii. Chapitre.

STudent. In the sayde summe called Summa rosella) in the title casus fortuitus/ i the begīnyng is put this case if a man lende to another a horse whiche is called there dēpositū & a house by chaūce falleth vpō the horse whether in that case he shal answere for the horse. And it is answered there that if the house were lyke to falle that than it can nat be taken as a chaunce but as the dēfaut of hym that had the horse deliuered to hī. But if the house were stronge & of likelihode & by comō prē sumpcion in no daūger of fallyng but that it fell by sodayne tempeste or suche other casuelte that than it shalbe taken as a

chaunce / & he that had the keppynge of the horse shalbe discharged / & thoughe his diuersite agreeth with the lawes of the realme yet for the more playner declaracion therof and for other lyke cases & chaunces that may happē to goodes that a mā hath in his keping that be nat his owne. I shal adde a litell more therto that shalbe somwhat necessarie as me thynketh to the orderinge of conscīēce. Fyrst a mā may haue of another by way of loue or borowynge / money / corne / wyne / & suche other thinges where the same thynge can nat be deliuered if it be occupied but another thynge of lyke nature & lyke value muste be redeliuered for it / & suche thynges he that they be lēte to may by force of that lene vse as his owne. And therfore if they perysshe it is at his ieoperdye & this is mooste properly called a loone. Also a mā may lēde to another a horse / an ore / a carte / or suche other thynges that maye be deliuered agayne / & they by force of that loue may be vsed & occupied reasonablie i such maner as they were borowed for / or as it was agreed at the tyme of the loone that they shulde be occupied / & if suche thynges be occupied / otherwyse thā accordyng to the intente of

the lone/& in that occupaciō they perysshe in what wyse so euer they perysshe/so it be nat in defaute of the owner / he that borowed them shalbe charged therwith in law & conscience/& if he that borowed them occupie them in suche maner as they were lent for/& in that occupacion they perysshe in defaute of hym that they were lente to: thā he shall answere for them. And if they perysshe nat through his defaute: than he that oweth them shall bere the losse. Also if a man haue goodes to kepe to a certayne day for a certayne recompence for the kepynge he shall stande charged or nat charged after as defaute or no defaute shalbe in hym/as before appereth/& so it is if he haue nothyng for the kepynge/but if he haue for the kepynge & make promyse at the tyme of the deliuerye to redeliuer them saufe at his peryll: than he shalbe charged with all chaunces that may fall. But if he make that promyse & haue nothynge for kepyng I thynke he is bounde to no suche casuelties/but that be wilfull and his owne defaute/for y^t is a nude or a naked promyse wherupon as I suppose no accion lyeth. Also if a man fynde goodes of another if they be after hurte or losse by wilfull neg-

gence he shalbe charged to the owner / but if they be lost by other casuelte as if they be layde in a house that by chaunce is burned / or if he deliuer thē to another to kepe that renneth away with thē: I thynke he be discharged / & these diuersites hold most comonly vpō pledges / or where a mā hurth goodes of his neyghbour to a certayn day for certayne money / & many other diuersities be in the law of the realme what shalbe to the iopardy of the one & what of the other whiche I will nat speke of at thys tyme. And by this it may appere that as it is comonly holden in the lawes of Englāde if a comon carver go by by wayes that be daungerous for robbynge / or driue by nyghte or in other vnconuenyente tyme and be robbed / or if he ouer charge a horse whereby he falleth into the water or otherwyse / so that the stuffe is hurte or empeyred / that he shall stande charged for his misdemeanoure / & if he wolde percase refuse to carye it / oneles promyse were made vnto hym y^t he shall nat be charged for no misdemeanour that shulde be in him that promise were voyde. For it were agaynste reason and agaynst good maners and so it is in all other causes lyke.

And all these diuersities be groũded by secondarie conclusions diriued vpõ the law of reasõ without any estatute made i that behalfe. And peraduenture the lawes & the conclusiõs therin be the more playne & the more opẽ. For if any statute were made theron: I thynke verely mo doutes & questiõs wolde rise vpõ that statute thã dothe now whã they be onely argued and iuged after the comon lawe.

☞ If a preste haue wõne moche by saieg of masse/whether he may gyue those goodes or make a wyll of them.

The.xxxix. Chapitre.

STudẽt. In the sayd summe called Sũma rosella in the title clericus quart⁹ the thyrde article/ is asked this question if a preste hath wõne moche goodes by sayenge of masse whether he may gyue those goodes or make a wyll of thẽ / whereto it is answered there that he may giue them or make a wyll of thẽ specially whã a man bequeteth money for to haue masses sayd for hym / & that lyke law is of suche thynges as a clerke wynneth by the

reason of an office. For it is sayde there yt suche thynges come to hym by reason of his owne persone/whiche saiges I thinke accorde with the lawe of the realme. But for as moche as in the sayd article & in diuers other places of the sayd chapitre/& in diuers other chapitres of the sayd summe is put great diuersitie betwene suche goodes as a clerke hathe by reason of his churche and suche goodes as he hath by reason of his person: and that he muste dispose suche goodes as he hath by reason of his churche in suche maner as is appoi ted by the lawe of the churche / so that he maye nat dispose them so liberally as he may the goodes that come by reasō of his owne persone / therfore I shall a litle touche what spirituall mē may do with theyr goodes after the lawe of the realme. Fyrst a Bisshop of suche goodes as he hath with the deane & the chapitre he may nether make gyfte nor byquest / but of suche goodes as he hath of his owne by reason of his churche or of the gifte of his auncestres or of any other/or of his patrimony he maye bothe make giftes & byquestes lawfully. And an Abbot of the goodes of his church may make a gyfte & the gyft is good as to

the lawe. But what it is in conscience that is after the cause & intente & qualitie of ye gyfte/ for if it be so moche that it notablie hurteth the house or the couent/or if he gyue away the bokes or the chalyces / or suche other thynges as belonge to the seruice of god/he offendeth in conscience/ & yet he is nat punisshable in the lawe/ne yet by a sub pena after some mē ne in none other wyse but by the lawe of the churche as a waster of the goodes of his monastery.
But neuertheles I will nat fully holde yt opinion as to that that belongeth necessaryly to the seruice of god/whether any remedye lye agaynst hym or nat / but remyt it to the iugement of other. And a deane & a chapitre & a mayster & bretherne of goodes that they haue to them selfe. And also of goodes that they haue with the chapitre & bretherne the same diuersite holdeth as appereth before of a Bisshope & the deane & chapitre / excepte that in the case of a mayster & bretherne the goodes shalbe ordeyned as shalbe assigned by the fundacion. And moreouer of a parson of a churche vicar/& chaunterie preest/or suche other/ all suche goodes as they haue / as well suche as they haue by reson of the personage/ vi

carage/or chaũtery / as that they haue by reason of theyr owne persone they maye lawfully gyue & bequethe where they will after the comõ lawe. And if they dispose parte amonge theyr parysshens & parte to the bylding of churches/or gyue parte to the ordinarie/or to poore men / or in suche other maner as is apoynted by the law of the churche they offende nat therein / onelesse they thynke them selfe bounden therto by ductie & by authorite of the lawe of the churche/nat regardynge the kiges lawes/ for if they do so it semeth they resiste the ordenaunce of god/ whiche hath gyuen power to princes to make lawes. But there as the Pope hath soueraintie in temporal thynges as he hath in spirituall thynges/ there some saye that the goodes of prestes muste in conscience be disposed as is conteyned in the saydsumme/but that holdeth nat i thy realme/for ye goodes of spũal mẽ be tẽporal i what maner so euer ye come to thẽ/& muste be ordered after the temporal law as the goodes of ye tẽporall mẽ muste be. How be it if there were a statute made i this case of lyke effecte in many poites/as the law of ye churche is. I thynke it were a right good & a profitable statute.

The.xl.Chapitre.

☞ who shall succede a clerke that dyeth intestate. ☜

The.xl. Chapitre.

STudent. In the sayd summe called rosella in the chapitre Clericus quartus the.viii. article/is asked this question/ who shall succede to a clerke that dyeth intestate. And it is answered that in goodes gottē by reason of the churche the churche shall succede. But in other goodes his kinnesmen shall succede after the order of the law/ & if there be nat kinnesmen than the churche shall succede. And it is there sayd forther that goodes gotten by a canon seculer by reason of his churche or prebende shall nat go to his successour in the prebende/but to y^e^ chapitre. But where one that is beneficed is nat of the congregaciō/ but he hath a benefice clerely seperate/as if he be a parsone of a paryshe churche or is a president or an archedeacon nat beneficed by the chapitre/ than the goodes gottē by reason of his benefice/shall go to his successoure & nat to the chapitre/ & none of these sayenges holde place in the lawes of Englande. ¶ Doctour. what is thā the law if a pārsone of a churche or a vycar in the

countrey dye intestate/or if a chanon secu-
ler be also a parson & haue godes by reason
therof & also by a prebende that he hath in
a cathedrall church & he dye intestate/who
shall haue his goodes. ¶Student. At the
comon law the ordinarie in all these cases
may administre the goodes & after he must
commit administracion to the next kythe
full frendes of hym that is ded intestate yt
wyll desyre it as he is bounde to do where
lay men that haue goodes dye intestate.
And if no mã desyre to haue administra-
cion than the ordinarie may administre &
se the dettes payde & he muste beware that
he paye the dettes after suche order as is
appoynted in the comon law/ for if he pay
dettes vpon simple cõtractes before an ob
ligacion he shalbe cõpelled to pay the dette
vpon the obligacion of his owne goodes
if there be nat goodes sufficiẽt of hym that
ded intestate/& though it be suffered in su
che case that the ordinari maye pay poũde
& pounde like that is to appoyncion the goo
des amonge the dettours after his discre-
cion/yet by the rigoure of the comon lawe
he might be charged to hym that cã fyrste
haue his iugement agaynst hym. And fer
thermore by that is sayde afore in yᵉ laste

chapitre appereth if a Bisshope that hath goodes of his patrimony / or a mayster of a colage/or a deane of goodes that they haue of theyr owne onely to them selfe dye intestate / that the ordinarie shall commit administracion therof as before appereth & if they make executours than the executours shall haue the ministracion thereof. But the heyres nor the kynnesmē by that reason onely y^t they be heyres or of kynne to hym that is deceassed shall haue no medlyng with his goodes exceptit be by custome of some contreys where the heyres shal haue heyre lomes. Or where the chyldren/ the dettes & legacis payde/shall haue a reasonable parte of thegoodes after the custome of the countrey.

¶ Addition.

☞ If a man be owtlawed of felony or be attaynted for murdre or felony: or that is an ascisimus maye be slayne by euery straungeour.

Doctour. It appereth in the sayde sūme called Summa angelica in the. xxi. chapitre. in the title of Ascismus the. 2. Paragraf yᵗ he is an ascismus that will slee men for money at the instaunce of euery man that will moue hym to it/ & suche man may lawfully be slayn nat onely by the Juge but by euery priuate persone. But it is sayde there in the. 4. Paragrafe. that he muste fyrst be iuged by the law as an ascismꝰ or he may be slayne or his gooddes seased. And it is sayde ferther there in the. 2. Paragraf that also in conscience suche an ascismus may be slayne if it be dne through a zele of iustice and elles nat. Is nat the lawe of the realme lykewise of mē outlawed/ abiured /or iuged for felony.

¶ Student. In the law of the realme there is no suche lawe that a man shalbe adiuged as an ascismus / ne if a man be in full purpose for a certayne sūme of money that he hath receyued to slee a man: yet it is no felony ne murdre in the law tyll he hath dne yᶜ acte for yᶜ intēt in felony nor murdre is nat punisshable by yᶜ comō law of yᶜ realme though it be dedly syn afore god /but i treasō or i som other yticuler casis by statute yᶜ ītēt may be punisshed. And though

a man in ſuche caſe kyll aman for money: yet he ſhall nat be attaynted that he is an aſciſmus. For as it is ſayde before: there is no ſuche terme of aſciſmus in the law of the realme: but he ſhall in ſuche caſe be arrayned vpon the murdre. And if he confeſſe it or plede that he is nat gylty & is foũde gylty by.xii.men: he ſhall haue iugemente of lyfe & of membre/ & ſhall forfeyte his landes & goodes. And lyke law is if in appele brought of the murdre: he ſtande dombe & wyll nat anſwere to the murdre: he ſhalbe attaynted of the murdre & ſhall forfeyt lyfe landes/ & goodes/ but if he arrayned of the murdre vpon an Inditemẽt at the kynges ſute: & there vpon ſtandeth dombe & wyll nat anſwere: there he ſhal nat be attainted of y^c^ murdre/ but he ſhall haue payne forte & dure (that is to ſaye) he ſhalbe preſſed to dethe & he ſhall there forfayte his goodes & nat his lãdes. But in none of theſe caſes (that is to ſaye) though a mã be outlawed for murdre or felony/ or be abiured/ or that he be otherwyſe attaited: yet it is nat lawfull for no man to murdre hym or ſlee hym ne to put hym in execucion but by auctorite of the kynges lawes. In ſo moche that if a mã be aduuged to haue payne forte and

dure/& the officer byhedeth hym/or on the contrary wyse putteth hym to payne forte & dure where he shulde byhede hym: he offendeth the lawe.

And if an officer whiche hath auctorite to put a man to dethe (maye nat put hi to deth but accordynge to the iugemente) than me thynket it shuld folowe that more stronger a straunger may nat put suche a man to dethe of his owne auctorite without cõmaundement of the lawe.

But if the iugement be that he shalbe hanged in chaynes/& the officer hangeth hym in other thynges & nat in chaynes I suppose he is nat gylty of his dethe/but some say he shall there make a fyne to the kynge bycause he hathe nat folowed the wordes of the iugement.

Also if a man that is no officer wolde areste a man that is outlawed/abiured/or attaynted of murdre or felony as is aforesayd/& he disobeyeth the arreste/& by reason of that disobedience he is slayn: I suppose the other shall nat be empeched for hys dethe/for it is lawfull vnto euery man to take suche persones & to bringe thẽ forthe that they may be ordered accordyng to the lawe. But if a capias be directed vnto the

Sheryfe to take a man in an accion of dette or trespas: there no man maye take that man but he haue auctorite from the Sheryfe. And if any man attempte of hys owne auctorite to take hym & he resisteth/ & in that resistunge is slayne: he that wolde haue taken hym is gylty of his dethe.

¶ Addition.

Whether a man shalbe boũden by that acte or offence of his seruaunt or officer .*.

The.xlii. Chapitre.

STudent. In the sayd sũme called Sũma ãgelica in the title domin⁹.4. ꝑagrafe: Is asked this question/whether a mã shalbe charged for his housholde And it is sayde there that he shall whã the housholde offendeth in an office or ministerie that the mayster is the chyefe officer of: & he hath the werke & the profite of yᶜ housholde. For it shalbe his defaut yᵗ he wolde chuse suche seruaunte/ for he ought to appoynte honeste persones / but it is sayde there that that is to be vnderstande ciuilly

& nat criminally/wherby as is sayde there he that is a gouernour is bounde for the offece of his officers/& that the same is to be holde of a Captayne/that he shalbe boũde for the offence of his squiers. And an hoste for his gheste & suche other. Neuertheleste it is sayd there y^t certayne doctours there reherced/& therto y^t if the office be an open or a publyke office/as an office of power or other lyke: It sufficeth to bryuge forthe hym that offended. But it is otherwyse. If it be nat a publike office:but an hoste or a tauerner or otherlyke. But if the houf holde offended nat in the office: the lorde is nat bounde as to the law:but in consciẽce he is bounde if he were in defaut by nat correctinge them / for he is bounde to correcte them bothe by worde and example / and if he fynde any incorrigible he is boũde to put hym awaye excepte that he hath presumptious that if he do so:he wyll be the worse / and than he maye do that he thynketh beste / and he is escused and elles nat. For to suche persons it is sayde (Error qui nõ resistitur:approbatur) that is to saye (An errour that is resisted: is approued. And thoughe diuers of the sayinges before reherced agre with the lawe

of the realme / yet all do nat so / & also tho
that do: are to be obserued by auctoritie of
the lawe of the realme & nat by the aucto-
rite alledged in the sayd paragrafe. And
therfore I entēde to treate sōwhat where
the mayster shalbe charged by his seruāte
or deputie / or by them that be vnder hym
in any office / & where nat / & than I entēde
to touche some other thynges where the
mayster after the lawes of the realme shal
be charged by the acte of his seruaunte in
other cases nat concernynge offices & whe
re nat.

¶ Fyrst if a man be committed to ward
vpon arrerages of accompte: & the keper of
the prysō suffereth hym to go at large: thā
an accīō of det shall lye agaynst hym. And
if he be nat sufficient: than it lieth agaynst
hym that committed the prysoner vnto him
& that is by reason of the statute of westm
the.ii.the.xi.Chapitre.

¶ Also if Baylyfes of fraunchises that
haue returne of writtes make a false retur
ne the partie shall haue auerment agaist it
as well of to litle yssues as of other thyn-
ges as well as he shall haue agaynste the
Sheryfe / but all the punysshemente shalbe
onely vpon the bayly & nat vpon the lorde

of the fraunchese / & that dothe appere by the statute made in the fyrste yere of kynge Edwarde the.iii.the.v.chapitre.But if an vnder Sheryfe make a returne where vpõ the sheryfe shalbe amerced there y^e hyghe sheryfe shalbe amerced for the returne is made expressely in his name.But if it be a false returne where vpon an accion of disceyt lieth:in that case it may be brought agaynst the vnder sheryfe/& se therof the statute that is called Statutũ de male returnantibus breuia.

Also if the kynges butteler make deputies he shall answere for his deputies as for hym selfe. As appereth in the statute made in the.xxv.yere of kynge Edwarde the thyrde. De prodicionibus the.xxi. Chapitre.

Also in the statute that is called statutum scaccarii it is enacted amonge other thynges that no officer of the eschequer shall put any clerke vnder hym but suche as he will answere for. And for as moche as the statute is general:it semeth that he shall answere as well for an vntrouthe in any suche clerke as for an ouer sighte.

Also in the.xiiii.yere of kynge Edwarde the thyrde the.ix.chapitre:it is enacted

that all Bayles shalbe adioyned agayne to the shyres / & that the sheryfe shall haue the keppynge of thē/ & that the sheryfe shall make suche vnder gardeyns for the which they wil answere. And neuertheles I suppose that if there be an escape by defaute of the Bayler: that the kynge may charge the Bayler if he wil. But it is no doui but he may charge the sheryfe by reason of his statute if he will/ But if it be a wilfull escape in the Bayler whiche is felonye in hym the sheryfe shall nat be boūde to answere to that felonye ne none other but the Bayler hym selfe and they that assented to hym.

¶ Also if a man haue a shyrekwyke/ constableshyp/or baylywyke in fee/ wherby he hath the keppynge of prysoners / if he lette any to replcuyn that be nat replcuysshable & thereof be attaynt/he shall lese the office. &c. And if it be an vndersheryfe/ constable/ or baylyfe that hath the keppyng of the pryson that doeth it without knowelege of the lorde: he shall haue enprysonement by. iii. yeres / & after shalbe raunsomed at the kynges will/ as appereth in the statute of westm̄. the fyrst the. xv. chapitre. And so it appereth that in this case he that is the

lorde of the pryson is nat bounde to aun-
swere for the offence of them that haue the
rule of the pryso vndre hym:but that they
shall haue the punisshment them selfe for
theyr misdemeanoure.

¶Also there is a statute made i the .xxviii.
yere of kyng Edwarde the.iii.the.xix. cha
pitre is called the statute of the Staple
whereby it is ordeyned that no marchaũt
ne none other man shall nat lese theyr goo
des for the trespas or forfayte of theyr ser-
uantes/oncleste it be by commaundement
of his mayster/or that the offende in the of
fice that his mayster hath put hym in / or
els that the mayster shalbe bounde to an-
swere for the dede of his seruaunte by the
lawe marchaunte / as in some place it is
vsed.

Also it is enacted in the .xiiii. yere of
kyng Edwarde the .iii. the .viii. chapitre
that wapentakes and hundredes that be
seuered frome the counties shalbe adioy-
ned agayne vnto them / and that if the
sheryfe holde thẽ in his owne handes:that
he shal put in thẽ suche baylyfes that haue
landes sufficiẽt / & for the whiche he wyll
answere/and that if he let them to ferme:

that they be let to the auncient ferme / but after it is prohibited by the statute of the. xrtii. yere of kynge Henry the.vi.the.x. chapitre. That no cheryfe shall let his bayliwykes nor wapentakes to ferme. And so whan they be ones in the cheryfes owne handes & the cheryfe putteth in baylyfes: they be but as vnder baylyfes to the kyng & the cheryfe the hyghe baylyfe / & they in maner the cheryfes seruaũtes & put in onely by hym. And therfore by the sayd statute of kynge Edwarde the.iii. He shall answere for them if they offende in theyr office/but if the cheryfe let them to ferme: thã though the cheryfe offende the statute in yᵗ doynge/yet whether he shalbe charged for theyr misdemeanor in the office or nat: is a great doubte to some men/ for they saye that this statute is onely to be vnderstãde where the baylywykes be in the cheryfes handes:but here they be nat so/ ne the baylyfes be nat his seruãtes but his fermours And therfore they saye that if the cheryfe shalbe charged forthem: It is by the comõ lawe & nat by the statute aforesayd.

Also in the.ii.yere of kyng Henry the. vi.the.xiii.chapitre it is enacted that officers by patente in euery court of the kyng

that by vertu of theyr office haue power to make clerkes i y^e^ sayd courtes shalbe charged & sworne to make suche clerkes vnder thē for whome they will answere.

Also the Hospitelers & Templers be prohibit that they shall holde no plee that bylōgeth to the kynges courtes vpō payn to yelde damages to the party greued & to make raunsome to the kynge/& that the superiours shall answere for theyr obediēces as for theyr owne dede. wesm̄ the .ii. the xlii. Chapitre.

Also the sergeaunt of the caterye shall satisfie all the dettes/damages / an execucions that shalbe recouered agaynste any that is purueyour or achatour vnder hym & that offende agaynst the statute of.xxvi of Edwarde the thyrde / or agaynste thys statute of.xxiii.of Hēry the.vi. In case y^e^ the purueyour or achatour be nat sufficiēt &c. And the party pleyntyfe shall haue a Scire facias agaynst the sayd sergeaunte in this case to haue execution as appereth in the.xxii.yere of kyng Henry the.vi. y^e^ fyrste Chapitre.

Also if a man be sent to pryson vpon a statute marchaunt by the Mayre / before whome the recognisaunce was taken/and

the Gayler wyll nat receyue hym: he shall answere for the det if he haue where with/ & if nat: than he shall answere that committed the Gayler to hym/ as appereth in the statute called the statute marchaunte.

Also if outrageous tolle be taken in a towne marchāt/ if it be the kynges towne let to ferme: the kynge shall take the fraunchese of the market into his handes. And if it be done by the lorde of the towne: the kynge shall do i like wyse. And if it be done by the baylyfe vnknowynge the lorde: he shall yelde agayne as moche as he hath taken/ & shall haue enprysonmēt of .xl. days. And so it appereth that y^e lord in this case shall nat answere for his bayly. wesm̄ the fyrst the .xxx. chapitre. And in all the cases before rehersed where y^e superiour is charged by the defaut of hym that is vnder hi: he in whose defaut his superiour is so charged: is bounde in conscience to restore hym that is so charged through his defaut. Except the case before rehersed of the hospitelers/ for all that the obediencer hathe: is the superiours if he wyll take it. And therfore what recompence shalbe made by the obediencer in that case: is all at the wyll of the superiour. And nowe I entende to

shewe the some perticuler cases where the mayster after the lawes of the realme shal be charged by the acte of his seruaũt/baylyfe/or deputie/& where nat/& so for to make an ende of this chapitre.

¶ Fyrst for tresspas of batery or of wrõg full entre into lãdes or tenementes: ne yet for felony or murdre the mayster shall nat be charged for his seruaũte/ oneles he dyd it by his commaundement.

¶ Also if a seruaunt borowe money i his maysters name: the mayster shall nat be charged with it oneles it come to his vse & that by his assente/and the same lawe is if the seruaunte make a contracte in hys maysters name/the contracte shall nat binde his mayster oneles it were by his maysters commaundement or that it came to the maisters vse by his assent. But if a mã sende his seruaunt to a fayre or market to bye for hym certayne thynges/though he cõmaunde hym nat to bye them of no mã in certayne: & the seruaũt doth he according the mayster shalbe charged/ but if the seruaunt in that case bye thẽ in his owne name nat spekynge of his mayster: the mayster shall nat be charged oneles pe thynges

bought come to his vse.

Also if a man sende his seruant to the market with a thynge which he knoweth to be defectiue to be solde to a certayne mā & he selleth it to hym: there an accion lieth agaynst the mayster/ but if ye mayster bideth hym nat selle it to any persone in certayne but generally to whome he cā. And he selleth it accordyng: there lieth no acciō of discoyt agaynste the mayster.

Also if the seruant kepe the maysters fyre necligētly/ wherby his maysters house is brent & his neyghbours also/ there an accion lieth agaynst the mayster. But if the seruaunte bere fyre necligently in the strete & therby the house of a nother is brēned / there lyeth no accion agaynste the mayster.

Also if a man desyre to logge with one that is no comon hostiler & one that is seruāte to hym that he lodgeth with: robbeth his chamber/ his mayster shal nat be charged for that robbynge/ but if he had ben a comon hostyler he shulde haue ben charged.

Also if a man be gardeyn of a pryson wherin is a man that is condempned in a certayne somme of money/ & another that

is in pryson for felonye & a seruaunt of the gardeyn that hathe the rule of the pryson vnder hym wylfully letteth them bothe escape in this case the gardeyn shal answere for the det & shall pay a fyne for the escape of the other as for a neclygent escape and the seruaunt onely shalbe put to answere to the felonye for the wylful escape ¶ Also if a mā make a nother his generall receyuoure/ & that receyuoure receyuith money of a credytoure of his mayster & makyth hym an acquytaunce and after payeth nat his maister yet that payment dyschargeth the credytoure: but yf the credytoure had takē an acquytaunce of hym without payeng hym any money: that acquytaunce onely were no barre to the mayster / onles he made hym receyueour by wrytynge and gaue hym auctho̅rite to make acquytaunces / and than that auctho̅rytye must be shewed. And yf yᵉ crebytour i suche case by agrement bytwene the receyuoure & hym: deliuer to yᵉ receyuour a horse or an other thynge i recompence of the dete: that delyuery dyschargeth nat the credytour onles yt be delyuered ouer vnto the mayster and he agre to it. For the receyuoure hath no suche power to make no suche cōmutacion

but his mayster gyue hym speciall cõmaũ dement therto.

Also if a seruaunte shewe a creditoure of his mayster that his mayster sende hym for his money/ & he payeth it vnto hym/ yt payment dischargeth hym nat if the mayster dyd nat sende hym for it in dede/except that it come after vnto the vse of the mayster by his assent.

Also if a man make a baylyfe of a maner & after the lorde of whome the maner is holden graunted the seygnoury to another & the baylyfe after payeth the rente vnto the graunt: that payment of the rent countreuayleth no attournant thoughe it were by fyne/ne shall nat bynde his mayster tyll he attorne hym selfe/but if the lord of whome the lande is holden dye seased of the seynoury & the baylyfe payeth the rent to the heyre of the lorde: that is a good season to the heyre though the baylyfe had no commaundement of his mayster to pay it For it belongeth to his office to paye rentes seruice but nat rentte charge as some men saye.

Also an encrochemente by the baylyfe shall bynde the mayster in auowry if he

had no commaundementte of the mayster to paye it.

Also if there be lorde Mesne & tenaunt & the tenaunte holdeth of the Mesne as of his maner of D the Mesne maketh a baylyfe. And after the tenaunt maketh a feoffement: the feoffe tendeth notice to the baylyfe & he acceptcth his rente with the arrerages/this notice shall nat bynde the lorde ne compell hym to alter his auowry / for the office of a baylyfe stretcheth nat therto but he muste haue there in a speciall commaundement of his mayster. Also if a seruaunt ryde on his maysters horse to do an erraunt for his mayster into a towne that hath auctoritie to make attachementes of goodes vpon playntes of dette &c. & there vpon a playnte of dette made agaynste the seruant: the maysters horse is atached by the officers thynkinge that the horse were his owne/& bycause the seruaunt appereth nat: the officers sease the horse as forfeyt/i this case the lorde shall haue an accion of trespas agaynst the officers/& this attachemēt for the det of his seruaūt shall nat binde hi.&c.but yt an host or a keper of a tauerne shalbe charged for theyr ghestes onles it be done by theyr assēt or cōmandement.

The.xliii. Chapitre.

I do nat remembre that I haue rede it in the lawes of Englande.

¶ Addition.

☞ whether a villayne or abonde man maye gyue away his goodes.

The.xliii. Chapitre.

DOctoure. It appereth in the sayd sũme called Summa angelica in the title donatio prima ye. 9. Paragrafe that a bonde man nor a religious mã/nor a monke/ne suche other that hath nothig in propre may nat gyue but it be by the licence of theyr superiour/ but that sayenge is nat as it is sayd there to be vnderstande of religious persones that haue lawfull ministracio of goodes/for if they giue with a cause reasonable: it is good/but without cause they may nat.

☞ Also if they by the licence if theyr prelate with the councell of the more parte of the couent abyde at scole or go on pilgrimage: they may gyue as other honest scolers & pilgrymes be reasonably wonte to do/and they maye also gyue almes where

there is great nede if they haue no tyme to aske licence.

Also if they se one in extreme necessite they may gyue almes though theyr superiours prohibite them/for than all thiges be in comon by the lawe of god. And therfore they be bounden for to do it / as appereth in the aforesayd summe called Sūma angelica in the title Elemosina the.6. Pagrafe. Dothe nat the lawe of Englande agree with these diuersities. ¶ Student. For as moche as the question is only made whether a villayne or a bōde man may gyue awaye his goodes or nat. And it semeth that after the forsayd Summe in ye title whiche thou haste before reherced/ yt he ne none other yt hath no propertie may nat gyue/whereby it appereth yt the sayd Summe taketh it that a bondeman shulde haue no propertie in his goodes/& yt therfore his gyfte shulde be voyde: I shall somwhat touche what propertie & what autoritie a villayn hath in his goodes after ye lawe of the realme / & what auctorite the lorde hath ouer them. And I wyll leue the diuersities that thou hast remēbred before of religiouse persones to them that liste to treate ferther therin hereafter.

Fyrst if a villayne haue goodes either by his owne proper byenge & sellynge / or otherwyse by the gyfte of other men / he hath as perfite a propertie & also as holl interest in them / & maye as lawfully gyue thē away as any free man hath may. But if the lordes sease thē before his gifte: than they be the lordes / & the interest of the villayne therein is determined.

Also if the lorde sease parte of the goodes of his villayne in the name of all the goodes that the villayne hath or shall hereafter haue that seasure is good for all the goodes that he had at that tyme / thoughe they were nat there present at the tyme of the sesure. But if goodes come to the villayne after the seasure: he maye lawfully gyue them away nat withstandynge the sayde seasure.

Also if the lorde clayme all the goodes of the villayne and seasith no parte of the: that seasure is voyde / and the gyfte of the villayne is good nat withstandynge that seasure.

Also if a man be bounde to villayne in an obligacion in a certayne summe of money / & the lorde seaseth the obligacion: thā the obligacion is his / but yet he can take

no accion there vpon but in the name of the villayne/and therfore if the villayne release the dette: the lord is barred by that release.

Also if a woman be a nyef/& she maryeth a free man/the goodes immediately by the mariage be the husbandes/and the lorde shall come to late to make any seasure/& if the husbād in that case maketh his wyfe his executrix & dyeth/and ye wyfe taketh the same goodes agayne as executrix to her husbande/yet it shall nat be lawfull for the lorde to take them fromme her thoughe she be a nyefe as she was before the maryage.

Also if goodes be gyuen to a mā to the vse of a villayne/& the lorde seaseth those goodes/that seasure after some mē is good by the statute made in the.xix.yere of kinge Henry the.vii.whereby it is enacted that the lord shall entre ī to lādes whereof other persons be seased to the vse of his villayne & they say that the same statute shalbe vnderstande by equitie of goodes in vse/as well as of landes in vse.

Also if a villayn be made a preste/yet neuertheles ye lord may sease his goodes & lādes as he might before. And vntill ye seses

he may alien them & gyue them awaye as he might before he was preste. And in this case the lorde maye order hym so that he shall do hym suche seruice as belongeth to a preste to do before any other: but he may nat put hym to no laboure nor other busines but that is honeste and lawfull for a preste to do.

Also if a villayn entre in to religion in his pere of proffe he maye dispose his goodes as he might haue done before he toke the habitte vpō hym. And in likewyse the lorde maye seaise his goodes as he myghte haue done before: but if he aftre make executours & be professed. And the executours take the goodes to the perfourmaunce of the wyll: than the lorde maye nat seise the goodes though the executours haue them to the perfourmaunce of the wyll of hym that is his villayne: nor in y^t case the lorde may nat seaise his bodye ne put hym to no maner of laboure but muste suffre hym to abyde in his religion vnder the obedience of his superiour as other religiouse persōs do that be no bondmen. And the lord hath no remedye in that case for losse of his bōd man but onely to take an accīō of trespas agaynst hym that receyued hym into reli-

gion without his licence/& therevpō to recouer dammages as shalbe assessed by.xii. men. Many other cases there be cōcernig the gyfte of the goodes of a vilayn wherof I wyll speke no more at thys tyme for this that I haue sayde suffiseth to shewe that the knowlege of the kynges lawe is right expediente to the good ordre of conscience cōcernynge suche goodes.

❧ If a clerke be promoted to the title of his patrimonie & after selleth his patrimonye & after falleth to pouertye whether shall he haue his title therin or nat.

The.xliiii. Chapitre.

STudent. In the sayd sūme called Rosella in the title Clericus quartus/the xxiiii. article it is asked if a clerke be promoted to yᵉ title of his patrimony whether he maye alienе it at his pleasure and whether in that alienacion the solempnite nedeth to be kepte that is to be kept in alienacīō of thynges of the churche/& it is answered there that it may nat be alienеd no more thā yᵉ goodes of a spirituall benefice

if it be accepted for a title & expressely assig
ned vnto hym/so that it shulde go as in to
a rhynge of the churche/ except he haue af
ter an other benefice wherof he may lyue.
But if it be secretely assigned to his title:
some agree it may be alened/& in this case
by the lawes of the realme it may be law-
fully alened whether it be secretely or ope
ly assigned to his title/for the ordinarie ne
yet the party hym selfe after the olde custo
mes of the realme haue no auctorite to bi
de any inheritaunce by auctho?itie of the
spirituall lawe / & therfore the lande after
it is assigned & accepted to be his title stan
deth:in the same selfe case to be boughte/
solde/charged/or put in execucio as it dyd
before. And therfore it is somwhat to be
maruayled that ordinaries will admitte
suche lande for a title to the intēte that he
that is promoted shulde nat fall to extreme
pouerty or go openly a beggynge/without
knowynge howe the comon lawe will ser-
ue therin/for of mere right all enheritaūce
within this realme ought to be ordered by
the kynges lawes/ & inheritaunce can nat
be bounden in this realme but by fine or
some other matter of recorde / or by feoffe-
mēt/or suche other or at leste by a bargain

that chaungeth an vse. And ouer that to assigne a state for terme of lyfe to him that hath a fee simple before: is voyde in the lawes of Englande without it be by suche a matter that it worke by way of conclusiõ or estapell/& in this case is no suche mater of conclusion/& therfore all that is done in suche case in assignynge of the sayd title is voyde. Also there is no interest that a mã hath in any maner landes or tenementes for terme of lyfe/for terme of yers/or other wyse/but that he by the law of the realme may put away his right therein if he will. And than whan this man alieneth his lãde generally: it were against the lawe of yᵉ realme yᵗ any interest of suche a title shuld remayne in hym agaynste his owne sale/& there is no diuersite whether the assignement of the title were open or secrete/ & so that title is voyde to all intentes. And in in lykewise if a house of religion or any other spirituall man that hath graunted a title after the custome vsed in suche titles sell all the landes & goodes that they haue that sale in the lawes of Englãde is good as agaynste that title/ & the byer shall neuer be put to answere to yᵗ title. Also some saye that vpon the comõ titles yᵗ be made

dayly in ſuche caſe that if he fall to pouer-
tie that hath the title he is without reme-
dy/for they be ſo made that at the comon
lawe there is no remedye for them / & if he
take a ſute in the ſpirituall court may men
ſaye that a prohibicō or a premunire lieth
And therfore it were good for ordinaries i
ſuche caſe to counſayle with them that be
lerned in the lawe of the realme to haue ſu
che a forme deuiſed for makynge of ſuche
titles/that if nede be wolde ſerue thē that
they be made vnto/or elles lette thē be pro
moted without any title/& to truſte in god
that if they ſerue hym as they ought to w
he wyll prouide for them to haue ſufficient
for them to lyue vpon. And beſide theſe ca-
ſes that I haue remembred before / there
be many other caſes put in the ſayde ſum-
mes for the well ordrynge of conſcience/
that is as me thynketh are nat to be obſer
ued in this realme neyther in lawe nor in
conſcience. ¶ Doctour. Doſte thou than
thynke that there was defaute in them y^t
drewe the ſayd ſūmes & put there in ſuche
caſes & ſuche ſolucions that as thou thyn-
keſt hurte conſcience / rather than to gyue
any light to it/ſpecially as in this realme.
¶ Sudent. I thynke no defaute in them/

but I thynke that they were righte well & charitably occupied to take so greate payn & labour as they dyd therin for the welthe of the people & clerynge of theyr consciences / for they haue therby gyuen a righte greate light in conscience to all countreys where the lawe Ciuile & the lawe Canon be vsed to temporall thynges. But as for the lawes of this realme they knewe them nat ne they were nat bounde to know thē/ & if they had knowen them it wolde litell haue holpen for the countreys that they mooste specially made theyr treatices for/ & in this countrey also they be right necessary & moche profitable to all men for suche doutes as ryse in conscience in diuers other maners nat concernyng the lawe of the realme. And I meruayle greatlye that none of them that in this realme are most bounden to do that in them is to kepe the people in a right iugement & in a clerenes of conscience: haue done no more in tyme past to haue the lawe of the realme knowē than they haue done/for though ignorāce may somtyme excuse / yet the knowlege of the trouth & the true iugemente is moche better/& somtyme though ignoraūce excuseth in parte it excuseth nat ī all/& therfore

me thinketh they dyd very well if they wolde yet be callers on to haue that poynt reformed as shortly as they could. And now bycause thou haste well satisfied my minde in many of these questions that I haue made: I purpose for this tyme to make an ende. ¶ Doctour. I praye the yet shewe me or that thou make an ende mo of ye cases that after thyne oppynion be set in diuers bokes for clerynge of conscience that as thou thynkest for lacke of knowynge of the lawes of the realme do rather blynde conscience than gyue a light vnto it / for if it be so than surely as thou haste sayde it wolde be reformed/for I thynke veryly ye lawes of the realme i many cases muste in this realme be obserued as well in conscie ce as in the iudiciall courtes of the realme ¶ Studēt. I will with good will shewe to the shortely some other questions that be made in the sayde summe to gyue the other occasion to se therin the oppinions of the sayde summes/& to se ferther therupon howe the opiniōs & ye lawes of the realme do agre togyder. And yet beside these questiōs yt I intēde to shew vnto the there be many other questiōs in the sayd summes that had as greate nede to be more plainly

declared accordinge to the lawes of ye realme as those that I shal shew the hereafter or as I haue spokē of before/but to the cases that I shall speke of hereafter I wyll shewe the nothyng of my conceyt in them/ but will leue it to other that wyll of charitie take some ferther payne hereafter in yt behalfe.

Diuers questions taken out by the student of the summes called Summa roscella/& Sūma angelica/which he thynketh necessari to be loked vpon and to be sene howe they stande & agre with the lawe of the realme.

The.xlv. Chapitre.

THe fyrste question is this / whether a custome may breke a lawe positiue Summa roscella/titulo consuetudo. Paragrafe.13.

The seconde is if a man attaynted or banisshed be restored by the prince/whether shall that restitution stretche to the goodes Summa roscella in the title Dampnatus i principio.

Item if a man be outlawed of felony/ abiured/or attaynted/ of murdre or felony or he that is an ascimus may be slayne by estrāgers & se lyke mater therto/ Sūma angelica/in the title Ascismus.Para.2.

This question is somwhat answered to in a newe addicion as appereth before in the.xli.Chapitre.

Item whether the mayster shalbe boūde by the acte or offence of his seruaunt or officer Summa angelica in the title dominus.Para.4.

This questiō is answered to in a newe Addicion / as appereth before in the .xlii. Chapitre.

Item whether a villayn may gyue away his goodes/Summa angelica/in the title donacio prima.Para.9.

This questiō is answered to in a new Addition as appereth before in the. xlii. Chapitre.

Itē whether an Abbot may gyue .&c. Summa angelica/in the title Donatio.1. Para.10.&.39.

Item whether a woman couert maye giue away any good/& it is answered /Sūma angelica/in the title donatio.1. Paragraphe.11.that she may nat without she ha-

ne goodes beſyde her dowȝye but onely in almes.

Item if a man do treaſon whether his gyfte of goodes after before atteyndre be good/Summa angelica/In the title donacio.1.Para.12.& it ſemeth there nay/& loke Summa angelica/in the title alienacio. Paragrafe.24.

Item if a man wittyngly make a contracte betwene two kinneſfolke or other that may nat lawfully marie to gyder whether he hath forfeth his goodes/ Summa angelica/ in the title donacio.1.Paragrafe.14.

Item whether ye father may gyue to the ſone/Summa angelica/ in the title donacio.1.Para.19.& Summa roſella/in the title donacio.2.Para.42.

Item whether a man may gyue aboue.v.c.s.abſq; inſinuacione/Summa angelica/in the tytle donatio.prima Paragrafe.20.

Item whether a gyfte ſhalbe auoyded by an ingratitude/Summa roſella in the title donatio.1.Paragrafe.17.&.29.& there it is ſayd that ye gyfte is voyde by the law of nature/and looke Summa angelica/in the title donatio prima.Para.42.&.45.

Itē whether any gyft betwene the husbande & the wyfe may be good/& it is sayde ye whan the husbāde gyueth it causa remuneracionis / Sūma rosella/in the title donatio.1.Paragrafe.32.

Item if a mā make a will & entre into religion whether he may after reuoke the wyll & it is sayd that freres minours may nat/& other maye/Summa rosella / in the title donatio prima. Paragrafe .35. in fine .:.

Item if a man gyue a nother a towne with all the rightes yᵗ he hath in the same whether the patronage.&c.& the tithes pasc/Sūma rosella/ in the title donatio prima.Paragrafe.56.

Item whether all that is bought with the money of the churche be the churches Summa rosella/in the title ecclesia.1.Paragrafe.7.

Itē if a gyft made to a monasteri may be auoyded by that the gyuer hath chyldrē after the gyfte.Sūma angelica in the title donatio.1.Para.43.

Itē if a mā bye a thyng vnder the half pryce/whether he be boūde by the lawe to restore.&c.Sūma rosella/i the title emptio & venditio.Para.6.

Itē whether a comō theefe vel cōmunꝫ depopulator agroꝝ may abiure/Sūma roſella/in the title emunitas.2. in principio. Et habetur ibi ī fine qō licet leges excipiāt plures perſonas tū per ius canonicū legibus derogatum eſt.

Itē whether a mā ſhal take yᵉ church for great enormious offēces yᵗ is nat murder nor felonye. Sūma roſella/ in the tytle Emunitas.2.Paragrafe.3.E.11.

Item if a man take one in the hyghe way & draw hym out & there beteth hym/ whether he ſhall haue puniſſhemēt that is ordeyned for thē yᵗ ſtryke one in the hyghe way/Sūma roſella in the title emūtas.2. Paragrafe.6.

Itē whether he yᵗ taketh yᵉ church may after for that offence be iuged to dethe/Sūma roſella/ in the title Emunitas.2.Paragrafe.8.

Itē whether the Biſſhopes paleys be ſentuary. Summa roſella/in the title emunitas.2.Para.24.

Itē whether the dignite of a Biſſhope or preſthode diſcharged boūdage/Sūma roſella/in the title epiſcopus/ in principio.

Itē whether a clerke is boūde to paye any impoſicions or tallages for his patri

money or otherwyse. Summa rosella / in the title excommunicatio. i. diuisione octa ua. Para. 4. f. 5. f. 6. f diuisione nona Paragrafe. i.

Item if it were ordeyned by statute yt if a man selle. &c. he shall gyue to the kyng u. d. whether a clerke be bounde to gyue it if he sell of his prebende/ Summa rosella/ in the title excommunicatio. i. diuisione nona. Paragrafe. 3

Item if it be ordeyned by statute that there shall nat be layde vpon a ded persone but suche a certayne clothe/ or thus many tapers or candels / whether the statute be good & it is lefte for a question. Sūma rosella/ in the title excōmunicatio. i. diuisione. 18. Para. 8. in fine.

Item if a man make a lease of a mylle for terme of yeres and it is agreed that the losse shall grynde the lessoure tolle fre duringe the terme/ after the lessoure is made an Erle or a Duke & hath greater houshold de than before/ whether the lesse be bounde therto. &c. Sūma rosella/ in the title familia. Paragrafe. 5.

Item if a mayster wyll nat pay his seruaūtes wages that hath serued hym faithfully whether that the seruaunt may take

secretlye as moche goodes of the maysters &c. & if he do whether he be bounde to restitucio/Summa rosella/in the title familia ꝑagrafe.6.

Itē thynges immouable of y^e^ church may nat be gyuen/Summa rosella/in the title of odū.ꝑara.1.& se there in ꝓncipio what feodum is.

Itē whether the sones bastardes & the sones lawfully begotten shall enherit togyder/Summa rosella/in the title filius.ꝑagrafe.1.

Itē whether father & mother may succede to theyr bastardes/ Summa rosella/ī the title filius.ꝑagrafe.4.

Item whether the father maye leue any of his goodes to his basterde / Summa rosella/in the title filius.ꝑagra.5.& Summa rosella/in the title societas. ꝑagrafe.23.

Item whether the offēce of the father shall hurte the sone in tempoꝛall thynges/ Summa rosella/in the title filius. ꝑagrafe.10.

Itē if a man gyue all his landes & goodes to his chyldꝛen / whether a bastarde shall haue any parte/Sūma rosella/in the title filius.ꝑagrafe.22.

Item to whome treasoure sounde belongeth/ Summa rosella / in the title furtum.ꝑara.11.

Itē if a dere or other wilde beaste that is so sore hurt that he may be takē cometh in to another mannes grounde whether it be his that owcth the grounde or his that strake hym/ Sūma rosella/in the title furtum.ꝑara.13.

Itē whether theefte be in a litteli thig as well as in a greate thynge/ Summa rosella/in the title furtum.ꝑara.18.

Itē what payne a theefe shal haue/Sūma rosella/in the title furtum.ꝑara.22.

Itē the goodes of ded men go to the heyres & that of dampned men.s.de terris Summa rosella/in the title hereditas.ꝑagrafe.1.

Itē whether a mā shalbe sayde gylte of murder by cōmaundemente coūsayle or assent/Summa rosella in the title homicidium.2.per totum / & lyke matters homicidium.4.in ꝓncipio and diuers other cases.

Itē a man maketh a ꝓiuy contracte with a womā & after hath a chylde by her/ & after maryed a nother woman & hath a chylde she nat knowige of the fyrst cōtract

whiche of the chyldren shalbe his heyre/ Summa roscilla/ in the title Illegitimus. Paragrafe.3.

Item whether the Pope may legittimate one to temporall thynges & to succede/ Summa roscilla /in the title Illegitimus Paragrafe.25.

Item if goodes be founde that were left of the owner as forsaken who hath right to them/ Sūma roscilla/ in the title Inuenta. Paragrafe.2. And loke Summa roscilla/ in the title furtum. Paragrafe.17. And thus I make an ende of these questions / & bycause thou desyredest me in the.xxxi.chapitre to shewe the somwhat where ignorāce excuseth in the lawe of the realme and where nat/ I wil answere somwhat to thy question & so cōmit the to god.

☞ where ignorance of the lawe excuseth in the lawes Englāde & where nat.

The.xlvi. Chapitre.

STudent. Ignorāce of the law though it be inuincyble dothe nat excuse as to the lawe but in fewe cases / for euery man is bounde at his peryll to take knowlege what the law of y^{e} realme is as well y^{e} law made by statute as y^{e} comō law/ but

ignorannce of the dede whiche may be cal led the ignorannce of the trouth of the dede may excuse in many cases. ¶ Doctoure. I put case that a statute penall be made & it is enacted that ye statute shalbe proclay med before suche a day in euery shyre / & it is nat proclaymed before the daye / & after the day a man offendeth agaynst the statu te shal he renne in the penalty. ¶ Studēt. I thynke ye / if there be no ferther wordes in the statute to helpe hym / that is to say / that if the proclamacion be nat made that no man shall be bounde by the statute / and the cause is this / there is no statute made in this realme but by the assēt of ye lordes spirituall & temporall & of all the comons / that is to say / by the knightes of the shyre Cytezens / & Burgeses that be chosen by al sente of the comons / whiche in the parlia= ment represente the estate of the hoole co= mons. And euery statute there made is of as stronge effecte in the lawe as if all the comons were there present personallie at the makyng therof / & lyke as there neded no proclamacion if all were there presente in theyr owne persone / so the lawe presu= meth / there nedeth no proclamacion whan it is made by theyr authoritie / & than whā

it is enacted that it shalbe proclaymed.&c. that is but of the fauoure of the makers of the statute & nat of necessite/and it can nat therefore be taken that theyr intente was that it shulde be voyde if it were nat proclaymed. Neuerthelcs some be of oppinio that if a man before the day appoynted for the proclamacion offende the estatute that he shulde nat in that case be punished / for they say that the intente of the makers of the statute shalbe take to be yt none shulde be punished before that daye/whiche is a doute to some other / but admitte it be as they saye that he shalbe excused / yet he is nat excused by the ignorannce of the lawe/ but bycause the intent of the makers excused hym. ¶ Doctoure. It is enacted in the vii.yere of kyng Rycharde the seconde the vi.chapitre that euery shyryfe shall proclayme the statute of wynchestre thre tymes euery yere in euery market towne to the intent that offenders shall nat be excused by ignorance/& it semeth by those wordes that if no proclamacion be made that the offender may be excused by ignorannce ¶ Studēt. Some take the intente of that statute to be that the people by that proclamacio shulde haue knowlege of the statute

of wincheſtre to the intēt that the forfetu re therein may be taken as well in conſcie ce as in lawe/& ſome take the ſtatute to be of ſuche effect as thou ſpekeſt of/ that is to ſay /that no forfeture ſhulde growe vpon the ſtatute of wyncheſtre agaynſt thē that were ignorant but proclamacion were made accordyng to the ſayd ſtatute of Ry chard. And if it be ſo taken thā the ſtatute of wyncheſtre is of ſmall effecte agaynſte moſte parte of the people: for certayne it is that the ſayd proclamacion is nat made/ but admitte it be as they ſay/thā they that be ignorante be excuſed by the ſayd per= ticuler eſtatute ſpecially made in that caſe & nat by the generall rules of the lawe /& cōtyme in diuers ſtatutes penalles they yᵗ be ignorant be excuſed by the ſelfe ſtatute as it is vpon the ſtatute of Rychard the. ii. the. xiii. yere/the ſeconde ſtatute & the laſt chapitre where it is enacted yᵗ if any per= ſone take a benefice by prouiſion that he ſhalbe banyſſhed the realme & forfet all his goodes/& yᵗ if he be in the realme he auoid within. vi. wekes after he hath accepted it & that none ſhall receyue hi that is ſo ba= nyſſhed after the ſayd. vi. wekes vpon lyke forfeture/if he haue knowlege/& ſo he that

hath no knowlege is excused by yᵉ expres-se wordes of the statute. And in lykewyse he that offendeth agaynste Magna carta is nat excōmenged but he haue knowlege that it is prohibit that he dothe. For they be onely excōmenged by the sentēce called (Sētentia lata sup cartas) yᵗ dothe it wil-fully or that dothe it by ignoraūce/ & correc-te nat thē selfe within.xv. days after they haue warninge. And somtyme yᵉ yᵗ be ig-noraunte of a statute be excused fro the pe-naltie of statute bycause it shalbe takē that the intēte of the makers of yᵉ statute was that none shalbe bounde but they that ha-ue knowlege /but that any man shulde be discharged in the lawe by ignoraunce of the lawe onely for that he is ignorante. I knowe fewe causes excepte it might be ap-plied to infantes that be in theyr infancy & within yeres of discrecion/ for if ignoraū-ce of the lawe shulde excuse in the lawe ma-ny offenders wolde pretende ignoraunce.

¶ Doctour. Shall an infaunte that hath discrecion & knoweth good fro euyll be pu-nisshed by a penall statute yᵗ he is ignorāt in. ¶ Studēt. If the statute be that for yᵉ offence he shulde haue corporall payne I thynke he shalbe excused & haue no corpo-

rall payne/but I suppose that that is nat for the ignorannce/ for thoughe he knewe the statute & wittigly offended / yet I thinke he shall haue no corporall payne as where he pleded Jointenaunce by dede that is found against hym/or if he plede a recorde assise & tayleth of it at his day / but that is bycause the lawe presumeth that it was nat the intente of the makers of the statute that he shulde haue that punishement/ but if he be of yeres of discrecion to knowe good fro euyll whether he shall than forfet the penaltie of a penall statute it is more doute/for it is comōly holden that if an infaūt had nat ben excepted in the statute of forstugemēt y^t y^e forstugemēt shulde haue boūde hi/& so shall his cestet &hȝ leuiēge of a crosse against the stat / or if he be a gardei of a prysone & suffre a prysoner escape he shall pay the dette bycause the statutes be generall & if he shulde by the statutes be boūde within age lyke reason wyll that he may by a statute penall lese his goodes.

¶ Doctour. If an infaunt do a murder or a felonye at suche yeres as he hath discrecion to knowe the lawe / shall he nat haue the punishement of the lawe as one of full age. ¶ Studēt. I thynke yes/ but that is

by an olde maxime of the lawe for eschewynge of murders & felonyes / & so it is of a trespas/but these cases renne nat vpon the groũde of ignorauncc/ but with what acte infantes shalbe punishable or nat punishable / for the tendernes of theyr age though they be nat ignorauncc.

¶ Doctourc. Be nat yet knyghtes & noble men that are bounde moste properly to set theyr studye to actes of chyualrye for defẽce of the realme. And husbande men that muste vse tyllage & husbandry for the sustcynaunce of the comunaltie/ & that maye nat by reason of theyr labourc put thẽ selfe to knowe the lawe: discharged by ignorance of the lawe. ¶ Studẽt. No verely/for sith all were makers of the statute: the law presumeth that all haue knowlege of that that they make / as it is sayd before / & as they be boũde at theyr peryll to take knowlege of the statute that they make: so be all that come after thẽ. And as for knyghtes & other nobles of the realme me seme: th y^t they shulde be bounde to take knowlege of the lawe as well as any other within the realme except them that gyue thẽ selfe to the study & exercyse o. the law: & except spirituall iuges that in many cases be boũde

to take knowlege of the law of the realme as is sayd before in the.xxv.chapitre. For though they be boũde to actes of chyualry for defẽce of the realme/ yet they be boũden also to the actes of iustice / & that as it semeth more thã other be by reasõ of theyr great possessions & auctoritie. And for the well orderyng of they tenantes/ seruãtes & neyghbours that many tymes haue nede of theyr helpe / & also bycause they be ofte called to be of kynges coũsayle & to the generall counsayles of the realme / where theyr coũsayle is right expediẽt & necessarie for the comon welthe / & therfore if the noble men of this realme wolde se theyr chyldren brought vp in suche maner that they shulde haue lernige & knowlege more than they haue comonly vsed to haue in tyme past/specially of the groundes & principles of the lawe of the realme wherin they be enheryte/though they had nat yᵉ hygh cõnynge of the hole body of the lawe /but after suche maner as mayster Fortescue in his boke that he intitelleth the boke (de laudibus legum Anglie) auertiseth the prince to haue knowelege of the lawes of hys realme / I suppose it wolde be a great helpe hereafter to the ministracion of Justice

in this relame. A greate surely for thē selfe & a righte greate gladnes to all the people for certayn it is the more parte of the people wolde more gladly here that theyr rulers & gouernours entended to order them with wisdome & Justice than with power & greate retynues. But ignorannce of the dede many tymes excuseth in the lawes of Englande. And I shall shortely touche some cases thereof to shewe where it shall excuse and where it shall nat excuse/& thā the reder maye adde to it after his pleasure and as he shall thynke to be conuc-niente.

☞ Certayne cases & groundes where ignorannce of the dede excuseth in the lawes of Englande & where nat.

The.xlvii. Chapitre.

STudent. If a man bye a horse in open market of hym that in righte hath no propertye in hym nat knowynge but that he hath righte/he hath good title and righte to the horse / and that ignorannce shall excuse hym. But if he had bought hym oute of open market / or if he had knowen that the seller had no righte / the byeng in opē market had nat excused hym

Also if a man reteyne a nother mannes ser uaunt nat knowynge that he is reteyned with hym/that ignorauncc excuseth hym bothe for the offence that was at the comō lawe agaynst the maxime that prohibited suche reteynynge of a nother mannes ser-uaūt. And also agaynst the statute of.xxiii. of Edwarde the.iii. where by it is phibite vpon payne of inprysonemente that none shall reteyne no seruaunte that departeth within his terme without licence or reaso-nable cause/ for it hath ben alwaye taken that the intente of the makers of the sayde statute was that they that were ignoraūt of the fyrste reteynoure shulde nat renne in any penaltye of the statute. And the same lawe is of hym that reteyneth one that is warde to another/ nat knowynge that he is his warde. And if homage be due & the tenaunt after that the homage is due ma-keth a feoffement/& after the lorde nat kno wynge of the feoffement distreyneth for ye homage in that case that ignorauncc shall excuse hym of dammages in a Repleuin / thoughe he can nat auowe for the homage but if he had knowen of the feoffemente he shulde haue yelded damages for the wrōg full takynge. Also if a man be boūde in an

obligacio̅ that he shall repayre the houses of hym that he is bounde to by suche a certayne tyme as ofte as nede shall require/& after the houses haue nede to be repayred but he that is bounde knoweth it nat/ that ignorau̅ce shall nat excuse hym for he hath bounde hym selfe to it/& so he muste take knowlege at his peryll/ but if the condicio̅ had ben that shulde repayre suche houses as he to whome he was bounde shulde assigne/& after he assigneth certayne houses to be repayred/but he that is bounde hath no knowlege of that assignement/that ignorannce shall excuse hym in the lawe/ for he hath nat bounde hym selfe to no reparacio̅s in certayne/but to suche as the party will assigne/and if he none assigne he is bou̅de to none/& therfore syth he that shuld make the assignement is prinye to the dede he is bounde to gyue notice of his owne assignement/but if the assignement had ben appoynted to a strau̅ger tha̅ the obligour muste haue taken knowlege of the assignement at his peryll. Also if a man bye la̅des whereunto a nother hath title whiche the byer knoweth nat/ that ignorannce excuseth hym nat in the lawe no more than it dothe of goodes. Also if a seruāt come with

his mayſters hoꝛſe to a towne that by cuſtome may attache goodes foꝛ det / & vpon a playnte agaynſt the ſeruaũte: an officer of the towne by infoꝛmacion of the party attacheth the mayſters hoꝛſe thynkynge that it were the ſeruantes hoꝛſe/that ignoraunce excuſeth hym nat/foꝛ whan a man wyll do an acte as to entre into lande/ ſeaſe goodes/take a diſtreſſe oꝛ ſuche other/he muſte by the law at his peryll ſe that that he doth be lawfully done as in the caſe beꝛe reherced. And in lykewyſe if a ſhyꝛyfe by a repleuyn deliuer other beaſtes than were diſtreyned /thoughe the partye that diſtreyned ſhewed hym they were the ſame beaſtes/yet an accion of treſpas lyeth agaynſt hym/& ignoꝛaunce ſhall nat excuſe hym foꝛ he ſhalbe compelled by the law as all officers comonly be to execute the kynges wꝛitte at his peryll accoꝛdynge to the tenour of it & to ſe y^t the acte that he doth be lawfully done. But otherwyſe it is after ſome men if vpon a ſomons in a ℘ꝛecipe quod reddat the ſhyꝛyfe by infoꝛmacion of the demaundaunt ſomoneth the tenaũt in a nother mãnes lande thynkynge it foꝛ the tenauntes lãde there they ſay he ſhalbe excuſed/foꝛ in that caſe he wolde nat ſea

se the lande we take possession in the lande/ but onely dothe somon the tenaunt vpō ye lande/ & the writte cōmaundeth hym nat that he shall somon the tenaunt vpon hys owne lande but generally that he shall somon hym & nameth nat in what lande & than by an olde maxime in the lawe it is taken that he shall somon hym vpon the lāde in demaunde/ & therfore though he mistake the lande & ignoraunt of it / yet if the demaundaunt enforme hym that that is the lande that he demaundeth that suffyseth to the shyryfe as to his entre for the somonynge as they saye: though it be nat ye tenaūtes lande. And here I make an ende of these questions for this tyme. ¶ Doctour. I praye the yet or we departe take a litell more payne at my desire. ¶ Studēt. what is that. ¶ Doctour. That thou woldest shewe me thy mynde in diuers cases of the law of the realme/ whiche as me semeth stande nat so clerely with conscience as they shulde do. And therfore I wolde gladly here thy conceyte therein how they may stande with conscience. ¶ Student. Put the cases & I shall with good will say as I thynke to them.

The.xlviii.Chapitre.

¶ Addition.

¶ The fyrste question of the Doctour. Howe the lawe of Englande maye be sayd reasonable that prohibiteth them that be arreyned vpon an Inditemente of felony or murdre to haue coũcell.

The.xlviii. Chapitre.

STudent. Me thynketh that the lawe in that poynte is very good & indifferent takynge the lawe therein as it is ¶ Doctour. why what is the lawe in this poynt. ¶ Student. The lawe is as thou sayst that he shall haue no coũcell/ but thã the law is ferther/that in all thynges that perteyne to the ordre of pledynge: the Juges shall so instructe hym & so ordre hym that he shall renne into no iopardye by his misplcadyng/as if he wyll pleade that he neuer knewe the man that was slayne/ or that he neuer had a peny worthe of the goodes/that is supposed yᵗ he shulde steele in these cases/ the Juges are boũde in conscience to enioyne hym that he muste take

the generall yssue & plede that he is nat gylty/for thouh they be set to be indifferente betwene the kynge & the partye as to the partye as to the principall matter as they be in all other matters: yet they be bette in this case to se that the partye take no hurt in fourme of pleadynge in suche matters as he shall shewe to be the trouthe of y^e matter/& that is a greate fauoure of the lawe/for i appell though the Justices of fauour wyll moste comonly helpe fourth the partye & sōtyme his counsell also in the fourme of pleadynge as they do also many tymes in common pleas/yet they might in bo cases if they wolde byd the party & his counsayle plede at theyr peryll. But they maye nat do so with conscience vpon enditements as me semeth/for it were a greate vnreasonablenes in the lawe if it shulde prohibit hym that standeth in ieopardy of his lyfe that he shulde haue no coūsayle/& thā to dryue hym to plede after the strayte rules & formalities of the lawe that he knoweth nat. ¶ Doctoure. But what if he be knowen for a comon offender / or that the Juges knowe by examinacō or by an euident presumption that he is gylty & he asketh sentwary / or pledeth misnomer or

hath some recorde to plede that he can nat plede after the fourme. Maye nat the Juges in suche cases byd hym plede at his peryll. ¶ Student. I suppose that they may nat/for though he be a comon offender or that he be gyltye/yet he oughte to haue yᵗ the law gyueth hym/& that is that he shal haue the effecte of his plees & of his matters entred after the forume of yᵉ law/and also somtyme a man by examinacion & by wytnes may appere gyltye that is nat gyltye. And in likewyse there may be a vehement suspicion that he is gyltye & that yet he is nat gyltye/& therfore for suche suspicious or vehement presumpcious me thynketh a man may nat with conscīēce be put fro that he ought to haue by the lawe: ne yet all though the Juges knew it of theyr owne knowlege. But if it were in appele I suppose that the Juges might do therin as they shulde thynke best to be done in cō science / for there is no lawe that byndeth them to instructe hym/but as they do comō ly the partyes of fauoure in all other cases but they may if they will byd them plede at theyr peryll by aduise of theyr coūcell/& if the appelle be pore & haue no coūcell: the court muste assigne hym coūcell if he aske

it as they muste do ī all other plees/ & that me thynketh they are boũde to do in conscience though the appelle were neuer so great an offender/and though the Juges knewe neuer so certaynly that he were gylty/for the lawe byndeth thē to do it. And so me thynketh that there is great diuersite betwene an indicte & an appelle. And ye reason why the lawe prohibiteth nat coũcell in appelle as it dothe in an inditement I suppose is this. There is no appell brought but that of comon presumption the appellaũt hath great malice agaynst the appelle. As whan the appele is broughte by the wyfe of the deth of her husbande/ or by the sone of the deth of his father / or that an appele of robbery is brought for stelig of goodes. And therfore if the iuges shulde in those cases shewe them selfe to instructe the appells: the appellauntes wolde grutche & thynke thē perciall/& therfore as wel for the indēpnitie of the court as of the appelle in case yt he be nat gylty the law sufferth the appelle to haue coũcell/but whā that a mā is indicted at ye kynges sute/ye kige intēdeth nothyng but iustice with fauour & yt is to ye rest & quietnes of hȝ faithful subiectȝ/& to pul away misdoers amōg

them charitably/ & therfore he wyll be contented that his iustices shall helpe to the the offenders accordyng to the trouthe as ferre as reasone & iustice may suffre. And as the kynge wyll be contented therein: it is to presume that his coūsayle wyll be cō tented. And so there is no daunger therby neyther to the court ne to the party/ & as I suppose for this treason it bega that they shulde haue no councell vpō inditements & that hath so longe continued that it is nowe growē into a custome & into a mari of the lawe that they shall none haue.

¶ Doctoure. But if the iuges knowe of theyr owne knowlege that the indyter is gylty/ & than he pledeth misnomer or a re-corde that he was autre foyz arraynded & acquyt of the same murdre or felony/ & the iuges of theyr owne knowlege know that the plee is vntru: may they nat than bid hi plede at his peryll. ¶ Student. I thynke yes: but if they know of theyr owne knowlege that he were gylty of the murdre or felonye: but y^t the plee was vntrewe they knewe nat but by cōiecture or informaciō I thynke they myghte nat then byd hym pleade at his peryll.

¶ The seconde question of the Doctoure whether the warrantie of the ionger brother that is taken as heyre bycause it is nat knowē but that the eldest brother is ded/be in conscience a barre vnto the elder brother as it is in the lawe .˙.

The.xlix. Chapitre.

DOctoure. A man seased of landes in fee hathe issue two sonnes the eldest sone goth beyonde the see & bycause a comon voyce is that he is ded the ionger brother is takē for heyre/ the father dyeth the ionger brother entreth as heyre & alieneth the lande with a warantye & dyeth without any heyre of his body / & after the elder brother cometh agayne & claymeth the lande as heyre to his father / whether shall he be barred by that warantye in conscience as he is in the lawe. ¶ Studēt. It is an maxime in the lawe that the eldest brother shall in that case be barred. And that maxime is taken to be of as strōge effecte in the lawe as if it were ordeyned by statute to be a barre. And it is as old a law

that ſuche a warãtye ſhall barre the heyre as it is that the enheritaunce of yᵉ father ſhall onely deſcende to the eldeſt ſone. And ſyth the lawe is ſo why ſhulde nat thã conſcięce folow the lawe as well as it doth in that poynt yᵗ the eldeſt ſone ſhall haue the lande. ¶ Doctour. For there appereth no reſonable cauſe wherupon that maxime myghte haue a lawfull begynnynge / for what reaſon is it that the warantye of an auncęſtre that hath no right to the lande ſhulde barre hym that hath right. And if it were ordeyned by ſtatute that one mã ſhuld haue a nother mãnes lãde & no cauſe is expreſſed why he ſhulde haue it / in that caſe though he myghte holde the lande by force of that ſtatute / yet he coulde nat holde it in conſcience without there were a cauſe why he ſhulde haue it & theſe caſes be nat lyke as me ſemyth to the forfeture of goodes by an outlawrye / for I wyll agree for this tyme that that forfeture ſtãdeth with conſcience by cauſe it is ordeyned for mini ſtracĩõ of iuſtice / but I cã nat preeyue any ſuche cauſe here: & therfore me thinketh yᵗ this caſe is lyke to the maxime yᵗ was at the comõ law of wrecke of the ſee / that is to ſay that if a mãnes goodes had bẽ wrec

ked vpō the see that the goodes shuld haue ben imediatly forfayted to the kyng. And it is holde by all wctors yᵗ yᵗ law is agaīst cōscience except certayne cases that were to longe to reherse now. And it was ordeyned by the statute at westmynster the first that if a dogge or cat come alyue to the lāde that the owner if he proue the goodes within a yere & a daye to be his shall haue thē whereby the sayde lawe of wrecches of the see is made more sufferable thā it was before/ & some thynketh in this case yᵗ this warrantie is no barre in cōscience though it be a barre in the law. ¶ Studēt. I pray the kepe that case of wrecke of the see i thy remembraunce & put it hereafter as one of thy questions & thereupon shewe me thy ferther mynde therein/ & I shall with good wyll shewe the mynde/ and as to this case that we be in nowe me thynketh the marime wherby the warrātye shalbe a barre is good & resonable/ for it semeth nat agaīst reason that a man shalbe bounde as to tē-porall thynges by the acte of his aūcestre to whome he is heyre/ for lyke as by the lawe it is ordeyned that he shall haue aduauntage by the same auncestre & haue al his landes by dissent if he haue any righte

so it semeth that it is nat vnreasonable
though the lawe for the priuity of blode y^t
is betwene them suffre hym to haue a dis-
aduauntage by the same auncestre / but if
the maxime were that if any of his aunce-
stres though he were nat heyre to hi made
suche a warrantye that it shulde be a barre
I thynke that maxime were agaynst con-
science/for in that case there were no grou̅
de nor cōsideracio̅ to proue howe the sayd
maxime shulde haue a lawfull begynnyng
wherefore it were to be taken as a maxim
agaynst the lawe of reason / but me thyn-
keth it is otherwyse ī this case for the rea-
son that I haue made before. ¶ Doctour.
If the father bynde hym & his heyres to y^e
paymente of a dette & dye / in that case the
sone shall nat be bounde to pay the det one
les he haue asses by discent fro his father.
And so I wolde agree that if this mā had
asses by discent fro the aūcestre that made
the warranty: that he shulde haue be bar-
red/but elles me thynketh it shulde stande
hardly with conscience that it shulde be a
barre. ¶ Student. In that case of the obli
gacio̅ the law is as thou sayst/& y^e cause is
for that the maxime of the law in y^t case is
none other but that he shalbe charged if he

haue alles by discente / but if the maxyme had ben generall that the heyre shulde be bounden in that case without any alles / or if it were ordeyned by statute that it shulde be so / I thynke that bothe the maxime & the statute shulde well stande with conscie ce. And lyke law is where a mā is vouched as heyre / he may entre as he that hath nothynge by discent / but where he claymeth the lande in his owne right there the warrantie of his auncestre shalbe a barre to hī though he haue no alleste fro the same aūcestre / & though it be sayd in Ezechiel the. xviii. chapitre. That the sone shal nat bere the wyckednes of the father / that is vnderstande spiritually: But as to tēporall goodes the opinion of doctours is / yt the sone somtyme maye bere the offence of his father. ¶ Doctour. Nowe that I haue herde thy mynde in this case I wyll take aduisement therein tyll a better leasure. And wil nowe proceede to another question. ¶ Studēt. I praye the do as thou sayste & I shall with good wyll make answere thereto as well as I can.

The.l. Chapitre.

☞ The thyrde question of the Doctoure if a man procure a collaterall warrãtye to extincte a right that he knoweth a nother man hath to lãde / whether it be a bürde in conscience as it is in the lawe or nat ...

The.l. Chapitre.

DOctoure. A man is disseased of certayne lãde the disseasoure selleth the lãde. &c. the aliene knowynge of the disseason optayneth a release with a warãtye of an auncrestre colaterall to the disseasie that knoweth also the right of yᶜ disseasye. The auncestre colaterall dyeth after whose deth the warrãtye discendeth vpon the disseasye / whether maye the aliene in that case holde the lande in conscience as he may by the lawe. ¶ Studẽt. Syth the warantye is discended vpon hym wherby he is barred in the lawe / me thynketh that he shall also be barred in conscience / and that this case is lyke to the case in the next chapitre before / wherein I haue sayd that as me thynketh it is a barre in conscience. ¶ Doctour. Though it might be takẽ for

abarre in conscience in that case / yet me thynketh in this case it can nat/for in that case the ionger brother entred as heyr knowynge none other but that he was heyre of right/& after whan he solde the lãde the byer knewe nat but that he that solde it had good right to sell it/& so he was ignoraunt of the title of the eldest brother and that ignoraunce came by the defaut & absence of hym selfe that was the elder brother. But in this case as well the byer as he that made the colaterall warrãtie knew the righte of the disseasye & dyd that they coulde to extincte that right/ & so they dyd as they wolde nat shulde haue be done to them/& so it semeth that he that hath the lãde may nat with cõsciẽce kepe it. ¶ Student. Though it be as thou sayste that all they offended in opteynyng of the sayd colaterall warrantie/yet suche offence is nat to be cõsidered in the lawe but it be in very speciall cases/for if suche alegiaũce shulde be accepted in ye law/releses & other writtinges shuld be of smal effecte/& vpõ euery light surmise all writtinges might come ĩ triall whether they were made with cõsciẽce or nat. Therfore to auoyde that inconuenience ye law will driue ye partye to ãswere

onely whether it be his dede or nat / & nat whether the dede were made with conscie ce or agaynst conscience/& though the par tye may be at a mischyefe thereby / yet the lawe wyll rather suffre that mischiefe thā the sayd inconuenience. And lyke law is if a woman couert for drede of her husbande & by cōpulcion of hym leuye a fyne/yet the woman after her husbādes dethe shall nat be admitted to shewe that matter in auoy- dynge of the fyne for the incōuenicēce that might folowe therupon. And after the opi nion of many men there is no remedye in these cases in the chauncery for they saye that were the comon lawe in cases concer nyng enheritaunce putteth the party fro any auerment for eschewynge of an incon uenience that might folowe of it amonge the people/that if the same inconuenience shulde folowe in the chauncery if the same matter might be pleaded there that no sub pena shulde lye in suche cases / & so it is in the cases before reherced. For as moch ver acion/delay/costes/& expences might gro- we to the party if he shulde be put to answe re to suche auermentes in the chauncerye as if he were put to answere to thē at the comō lawe & therfore they thynke that no

sub pena lyeth in the sayd cases ne in other lyke vnto them. Neuertheles I do nat take it that theyr opynion is that he yt boughte the lande in this case may with good conscience holde the lande bycause he shall nat be compelled by no lawe to restore it/ but that he is in conscience & by the law of reason bounde to restore it or otherwyse to recompence the partye so as he shalbe contented & I suppose veryly it is so if he wyll kepe his soule out of peryll & daũger. And after some men to these cases may be resẽbled ye case of a fine with none clayme that is remembre before in the.xiiii.chapitre of this boke/ where a mã knowyng another to haue right to certayne lande causeth a fine to be leuied therof with proclamacion and the other sufferyth fyue yeres to passe without clayme in yt case he hath no remedye nether by comon law nor by sub pena/ & that yet he that leuyed the fine is bounde to restore the lande in conscięce. And me thynketh I coulde right well agree that it shulde bẽ so in this case/ & that specially/ by cause the partye hym selfe knoweth perfitely that the sayde colaterall warrantye was obteyned by couen and agaynst conscience.

The.li. Chapitre.

☞ The fourth question of the doctour is of wrecke of the see .*.

The.li. Chapitre.

DOctour. I pray the let me now here thy mynde howe the lawe of Englãde concernynge goodes that be wrecked vpon the see may stande with conscience for I am in great doute of it. ¶ Student. I pray the let me fyrste here thyne opiniõ what thou thynkest therein. ¶ Doctoure. The statute of westmynstre the fyrst/ that speketh of wrecke is/that if any mã dogge or catte come alyue to the lande out of the shyppe or barge/thatt it shall nat be iuged for wrecke so that if the partie to whome the goodes belonge come within a yere & a day & proue them to be his that he shall haue them or els that they shall remayne to the kynge. And me thynketh that the sayd statute standeth nat with conscience / for there is no lawfull cause why the party ought to forfet his goodes ne that the kig or lordes ought to haue them for there is no cause of forfeture in the partye but rather a cause of sorowe & heuines .And so that lawe semeth to adde sorowe vpon sorowe: And therfore doctours holde comon

ly that he that hath suche goodes is boũde to restitucion & that no custome may helpe for they say it is agaynst the cõmaũdemẽt of god.Le.xix.where it is cõmaũded that a man shall loue his neyghboure as hym selfe/& that they say he dothe nat that taketh away his neyghbours goodes / but they agre that if any mã haue cost & labour for the sauynge of suche goodes wrecked specially suche goodes as wolde perysshe if they laye styll in the water/ as suger / paper/salte / mele / and suche other / that he ought to be alowed for his costes and labour but he must restore the goodes except he coulde nat saue them without puttinge his lyfe in ieoperdie for them / & than if he put his lyfe in suche ieoperdie & the owner by comon presumpcion had had no waye to haue saued them thã it is moste comõly holden that he may kepe the goodes in cõscience/but of other goodes that wolde nat so lightly perysshe/but y^t the owner might of comon presumpciõ saue them hym selfe or that might be saued without any perill of lyfe/the takers of them be bounde to restitucion to the owner whether he come within the yere or after the yere. And me thinket this case is somwhat lyke to a case

that I shall put / if there were a lawe & a custome in this realme or if it were ordeyned by statute that if any alie came throughe the realme in pylgrimage & dyed / that all his goodes shulde be forfet / that lawe shulde be agaynst conscience for there is no cause reasonable why the sayde goodes shulde be forfet. And no more me thynketh there is of wrecke. ¶ Student. There be diuers cases where a ma shall lese his goodes & no defaute in hym / as where beastes straye awaye fro a man & they be taken vp & proclaymed & the owner hath nat herde of them within the yere & the day / though he made sufficient diligence to haue herde of them / yet the goodes be forfet & no defaute in hym / & so it is where a ma kylleth a nother with the sworde of I. at style the sworde shalbe forfet as a deodade & yet no defaute is in the owner / & so me thynketh it may be in this case / & that sith the comō lawe before the sayd statute was that the goodes wrecked vpon the see shalbe forfet to the kyng that they be also forfet nowe after the statute except they be saued by folowynge the statute / for the lawe muste nedes reduce the propertye of all goodes to some man & whan the goodes be wrec-

ked it semeth the property is in no mā but admitte that the property remayne still in the owner thā if the owner percase wolde neuer clayme than it shulde nat be knowē who ought to taken thē: & so mighte they be distroyed & no profite come of them/ wherefore me thynketh it reasonable that the lawe shall appoynt who ought to haue thē/ & that hath the lawe appoynted to the kyng as souerayn & hed ouer the people.

¶ Doctoure. In the cases that thou haste put before of the stray & deodand there be considerations why they be forfet / but it is nat so here/ & me thynketh that in this case it were nat vnreasonable that the law shulde suffre any man that wolde take thē to take & kepe them to the vse of ye owner/ launge his reasonable expēces / & this me thynketh were more reasonable law than to pull the property out of the owner with oute cause. But if a man in the see cast his goodes out of the shyp as forsaken : there doctours holde that euery man may take them lawfully that wyll/ but otherwyse it is as they say if he throw them out for fere that they shulde ouercharge the shyppe.

¶ Studēt. There is no suche law in this realme of goodes forsaken / for thoughe a

man weyue the poſſeſſion of his goodes & ſayth he forſaketh than / yet by the lawe of the realme the property remayneth ſtill in hym/& he may ſeaſe them after whā he wyll/& if any man in the meane tyme put the goodes in ſaufegarde to the vſe of the owner: I thynke he dothe lawfully & that he ſhalbe alowed for his reaſonable expences in that behalfe as he ſhalbe of goodes foūde/but he ſhall haue no property in thē no more thā in goodes foūd. And I wolde agree that if a mā preſcribe that if he fynde any goodes withi his maner y^t he ſhulde haue thē as his owne: that y^t preſcripcion were voyd/for there is no cōſideraciō how that p̄ſcriptiō might haue a lawfull begynnynge/but in this caſe me thynketh there is ¶ Doctor. what is that. ¶ Studēt. It is this. The kyng by the olde cuſtome of the realme as lōrd of the narow ſee is boūde as it is ſayd to ſcour y^e ſee of pyrates & petyt robbers of the ſee. And ſo it is redde of the noble kyng ſait Edgare: y^t he wolde twiſe in the yere ſcour the ſee of ſuche pyrattes/ but I mean nat therby that y^e kig is boūd to cōduct his marchātes vpō y^e ſee againſt al outward enemies: but y^t he is boūd onely to put away ſuch pyrats & petite robers

And bycause yᵗ can nat be done without greate charge it is nat vnreasonable if he haue suche goodes as be wrecked vpō the see towarde yᵗ charge. ¶ Doctour. Upon that reason I wyll take a respite tyll a nother tyme.

☞ The.v. question of the Doctoure whether it stande with conscience to prohibit a Jury of meate & drynke tyll they be agreed. The.lii. Chapitre.

Doctour. If one of the.xii. men of an enquest know the very trouth of his owne knowlege & instructeth his fe lowes thereof: & they wyll in no wyse giue credence to hym / and thereupon bycause meate and drynke is prohibit them: he is dryuen to that poynte that eyther he must assente to them and gyue the verdyte a gaynst his owne knowlege & agaynste his owne conscience/or dye for lacke of meat/ howe may that law than stāde with con sciēce that will dryue an innocēt to that extremitie to be eyther forsworn or to be famished & dye for lacke of meat. ¶ Studēt I take nat yᵉ law of yᵉ realm to be yᵗ iury

after they be ſworne may nat eate nor drinke tyll they be agreed of the verdicte: but trouth it is there is a maxime & an olde cuſtome in the lawe that they ſhall nat eate nor drynke after they be ſworne tyll they haue gyuen theyr verdit without the aſſente & licēce of the iuſtice/ & that is ordeyned by the lawe for the eſchewynge of diuers inconuenīces that might folow therupō/ & that ſpecially if they ſhulde eate or drinke at the coſtes of the partyes / & therfore if they do the cōtrarye: it may be layde in areſte of the iugement/ but with the aſſente of the Juſtices they may bothe eate & drinke as if any of the Jurours fall ſycke before they be agreed of theyr verdit ſo ſore that he may nat comon of the verdit/ thā by ye aſſent of the Juſtices he may haue meate & drynke & alſo ſuche other thynges as be neceſſary for hym/and his felowes alſo at theyr owne coſtes or at the indifferent coſtes of the partyes if they ſo agree by the aſſent of the iuſtices may bothe eate & drinke & therfore if the caſe happē that thou now ſpekeſt of & that the Jurī can in no wyſe agree in theyr verdit/ & that appereth to ye Juſtices by examinacīō: the Juſtices may in that caſe ſuffre them haue bothe meate

& drynke for a tyme to se wheter they wyll agre/& if they wil in no wyse agre: I thike that than Justices may set suche order in the matter as shall seme to them by theyr discrecion to stande with reason & conscience by awardynge of a newe enqueste & by settinge fines vpon thē that they shal finde in defaute or otherwise as they shall thike best by theyr discrecion lyke as they maye do if one of the Jury dye before verdit or if any other lyke casualties fall in yᵗ behalfe But what the iustices ought to do in this case that thou haste put by theyr discreciō: I wyll nat tret of at this tyme.

☞ The.bi.question of the Doctour whether the colours that be gyuē at the comon lawe in assises / accions of trespas/& diuers other accions stande with conscience bycause they be moste comonly feyned & be nat trew.

The.liii.Chapitre.

DOctour. I pray the let me here thy mynde to what intente suche colors be gyuen/& syth they be comonly vntruc:how they may stande with conscience

¶ Studēt. The cause why suche colours be gyuen is this / there is a maxime and a grounde in the lawe of Englande: that if the defendant or tenant in any accīō plede a plee that amoūteth to the generall issue that he shalbe compelled to take the generall issue/ & if he will nat/ he shalbe condēpned for lacke of answere/ & the generall issue in assise is / that he that is named the disseasoure hath done no wronge nor no disseason. And in a writte of entre in the nature of assise the generall issue is that he disseased hym nat/ & in an accīō of trespas that he is nat gylty & so euery accīō hath his generall issue assigned by the lawe / & the tenaunt muste of necessitie eyther take that generall issue / or plede some plee in abatement of the writt / to the iurisdiccīō/ to the persone or elles some barre or some matter by way of conclusion. And therfore if Johan at style infeffe Henry herte of lāde & a straunger bryngeth an assise against the sayd Henry herte for that lande whose title he knoweth nat. In thys case if he shuld be cōpelled to plede to the poynt of the assise/ that is to say/ yᵗ he hath done no wrōge ne no disseason the matter shulde be put in the mouthes of .xii. laye men whiche be

nat lerned in the lawe/ & therefore better it is that the law be so ordered that it be put in the determinacion of the iuges than of laymen. And if the sayd Henry hert in the case before reherced wolde plede in barre of the assise that Johan at style was seased & infeffed hym/ byforce whereof he entred & asked iugement if that assise shulde lye agaynste hym that ple were nat good for it amoũteth but to the general issue & therefore he shalbe compelled to take the generall issue or els the assise shalbe awarded agaynst hi for lacke of answere. And therefore to the intente the matter may be shewed & pleded before the iuges rather than before Jury/ the tenantes vse to gyue the pleyntyfe a coloure/ that is to say a colour of accion whereby it shall appere y^t it were hurtfull to the tenant to put that matter that he pleadeth to the iugemẽt of .xii. mẽ/ & the moost comon coloure that is vsed in suche case is this/ whan he hath pleded y^t suche a mã enfeffed hym as before apereth it is vsed that he shall plede ferther & saye that the pleyntyfe claming in by a coloure of a dede of feffemẽt made by y^e sayd feffor before the feffement made to hym/ where nought passed by y^e dede ẽtred/ vpõ whome

he entred & asketh iugemente if the assise lye agaynste hym. In this case bycause it appereth to be a dout to vnlerned mē whether the lande passe by the dede without ly uerey or nat/therfore the lawe suffreth the tenāt to haue that speciall matter to bring the matter to the determinacion of the Juges. And in suche case the Juges may nat put the tenant fro the plee/for they knowe nat as Juges but that it is trewe/ & so if any defaut be it is in the tenaunt & nat in the court. And though the trouthe be that there were no suche dede of feoffemēt made to the playntyfe as the tenaunt pleadeth/ yet me thynketh it is no defaute in the tenant for he dothe it to a good intēt as before appereth. ¶ Doctour. If the tenante knowe that the feoffour made no suche dede of feoffement to the pleyntyfe/thā there is a defaut in the tenant to plede it/ for he wittingly sayth agaynste the trouthe/ & it is holden by all doctours that euery lye is an offence more or lesse/ for if it be of malice & to the hurte of his neyghbour/ than it is called(Mendaciū permiciosum) & that is dedely synne. And if it be in sporte & to the hurte of no man /nor of custome vsed / ne of pleasure that he hath in lyenge/ than

it is venall synne/& is called in latine mē-
dacium iocosum. And if it be to the profite
of his neyghbour & to the hurte of no man
than it is also venall synne / & is called in
latine mendacium officiosum. And though
it be the leeste of tho thre yet it is a venall
synne & wolde be eschewed. ¶ Student.
Though the mydwyfes of Egipte lyed
whan they had reserued the male chyldrē
of y^e Ebrewes/saig to the kyng Pharao/
that the Ebrewes had women that were
comyng in the same crafte whiche or they
came had reserued the chyldren alyue whe
re in dede they thē selfe of pyty & of drede
of god reserued them. yet saint Jerome ex
pouñdeth the texte folowyng whiche sayth
that our lorde therfore gaue thē houses y^t
it is to be vnderstande that he gaue them
spirituall houses & that they had therfore
eternall rewarde / & if they synned by that
lye all though it were but venall/yet I cā
nat se howe they shulde haue therfore eter-
nall rewarde. And also if a man intending
to slee a nother aske me where that man/
is it nat better for me to lye & to say I can
nat tell where he is though I know it/thā
to shewe where he is whereupon murder
shulde folowe. ¶ Doctour. The dede that

the mydwyfes of Egipte dyd in sauing ye chyldren was meritorious & deserued reward euerlastinge(if they beleued in god) & dyd good dedes beside as it is to presume they dyd/whan they for the loue of god refused the dethe of the Innocentes / & than though they made a lye after whiche was but venialll synne that coulde nat take fro them theyr reward / for a venialll synne dothe nat vtterly extincte charitie but letteth the feruour therof: & therfore it maye well stande with the wordes of sayut Jerome that they had for theyr good dede eternall houses / & yet the lye that they made to be a venialll synne/but neuertheles if suche a lye that is of it selfe but venialll be affirmed with an othe/ it is alwaye mortall if he know it befalle that he sweareth. And as to the other question it is nat lyke to this question that we haue in hande as me semeth /for somtyme a man for eschewing of the greater euyll may do a lesse euyll / & than the lesse is no offence in hym/& so it is in the case that thou hast put wherin bycause it is lesse offēce to say he wotteth nat where he is though he knowe where he is than it is to shewe where he is / wherupon murdre shulde folowe/it is therfore no syn

ne to saye he wotteth nat where he is / for
euery mā is bounde to loue his neyghbour
& if he shewe in this case where he is kno-
wynge his dethe shuld folowe therupon it
semeth that he loued hym nat / ne that he
dyd nat to hi as he wolde be done to / but i
the case that we be in here / there is no su-
che synne eschewed / for though the partie
pleded the generall issue the iury might fin
de the trouth in euery thyng / & therfore in
that he sayth that the pleyntyfe claymige
in by the colour of a dede of feffement whe
re nought passed entred .&c. knowynge y^t
there was no suche feffemēt it was a lye
in hym & a veniall synne as me thynketh.
And euery mā is boundē to suffre a deedly
synne in his neyghbour / rather than a ve-
niall synne in hī selfe. ¶ Studēt. Though
the Jury vpō the generall issue may finde
the trouth as thou sayste / yet it is moche
more daungerous to the Jury to enquere
of many poitz thā to enquere onely of one
poit. And for as moch as our lord hath gy
uē a cōmaūdemēt to euery mā vpō hz ney-
ghbour / therfore euery mā is boūd to forse
as moch as i hi is y^t by hī no occasiō of of-
fēce come to hz neyghbo^r. And for y^e same
cause / y^e law hath ordeined diuers maximz

& principles whereby issues in the kynges court may be ioyned vpon one poynte in certayne as nyghe as may be/& nat generaltye/lest offence might folowe therupon agaynst god/& a hurte also vnto the Jurr/ wherfore it semeth y^t he loueth nat in hys neyghboure as hym selfe ne that he dothe nat as he wolde be done to that offereth suche daunger to his neyghbour where he may well & conuenyently kepe it fro hym if he will folowe the order of the lawe/& it semeth that he putteth hym selfe wilfully in icoperdye that dothe it/& it is writen Ecclesiastici.iii. Qui amat periculum in illo peribit/that is to say/he that loueth peryl shall perysshe in it/and he that putteth his neyghbour in peryll to offende putteth hi selfe ī the same/& so shuld he do me semeth that wolde wilfully take the generall issue where he mighte cōuenyētly haue the special matter/& ferthermore it is none offēce in princes & rulers to suffre cōtractes and byēg & sellig in markettes/fayres/though bothe periure & disceyte will folowe therevpon/bycause suche contractes be necessarye for the comon welthe/so it semeth lykewyse that there is no defaute in the partye that pleadeth suche a special mater

to auoyde fro his neyghbour the daunger of periurie/ne yet in the court though they enduce hym to it / as they do somtyme for the intent before reherced / & in lykewyse some wyll say that if the rulers of Cytyes & communaltyes somtyme for the punis=shement of felons/murderers/& such other offenders wyll to the intēte they wolde haue thē to cōfesse the trouth say to thē that be suspected that they be informed in such certayne defautes or misdemeanours ī the offenders & that they do to the intente to haue thē to confesse the truth that though they were nat so informed that yet it no offence to saye they were so informed bycause they do it for the comō welthe/for if offenders were suffered to go vnpunisshed y^e^ to=mon welth wolde soone decay & vtterly pe rysshe. ¶ Doctour. I wyll take aduisemēt vpō the reason in this matter tyll an other season & I wyll now aske the another que=stion somwhat lyke vnto this. I praye the let me here thy mynde thereun. ¶ Studēt. Let me here thy question and I shall with good wyll say as I thynke therein.

The.liiii. Chapitre.

Addition.

☞ The.vii. question of the Doctoure concerneth the pleadynge in assise whereby the tenauntes vse cõtyme to pleade in such maner that they shall cõfesse no ouster .*.

The.lvii. Chapitre.

Doctoure. It is comonly vsed as I haue herde say that whan the tenãt in assise pleadeth that a straũgeour was seased & enfeoffede hym & gyueth the plaintyfe a colour in suche maner as before appereth in the.lvi. chapitre / that the tenant many tymes whan he hath pleaded thus: & the pleyntyfe claymyng in by a colour of a dede of feoffemente made by the sayd straũgeour / where nought passed by the dede entred / & that than they vse to say ferther vpon whome .A. B. entred vpon whome the tenant entred / where in dede ye sayd. A. B. neuer entred / ne haplye there was neuer no suche man. Howe can thys pleadynge be excused of an vntruthe / and what reasonable cause can be why suche a

pledynge shulde be suffred agaynste the trouthe. ¶ Student. The cause why that maner of pleading is suffred is this. If yᵉ tenaũt by his pleadyng cõfessed an immediate entrye vpõ the plaintyfe: or an immediate putting out of the playntyfe/ which in frenche is called an oustre/ thã if the title were after founde for the playntyfe: the tenaũt by his confession were attayned of the disseason. And bycause it maye be that though the playntyfe haue good title to the lande: that yet the tenaũt is no disseasour. Therfore the tenaũtes vse many tymes to pleade in suche maner as thou hast sayd before to saue them selfe fro cõfessing of an oustre/ & so if there be any defaut it is nat in the courte ne in the lawe/ for they know nat the trouth therin tyll it be tried & me thynketh also that there is in this case right litle defaut or none in yᵉ tenãt nor in his coũsell/ specially if the coũcell know that the tenant is no disseisour. But as to that poynt I praye the that lyke as thou haste takẽ a respite to be aduysed or that thou shewe thy ful mynde in the questiõ of a colour gyuẽ in assise whereof mencio is made in the sayde .liii. chapitre/ that I in lykewyse maye haue a lyke respyte in

this case tyll other tyme to be aduised / & than I shall with good wyll shewe the my full mynde therin. ¶ Doctour. I am content it be as thou sayest but I pray the yᵗ I may yet adde a nother question to the two questiõs before rehersed of yᵉ colours in assise & fele thy mynde therein / bycause that sowneth moche to the same effecte yᵗ the other do (that is to saye) to proue that there be diuers thynges suffred in the law to be pleaded that be agaynst the trouthe / & I pray the let me hereafter knowe thy mynde in all thre questiõs / & thou shalt thã with a good wyll knowe myne. ¶ Student. I praye the shewe me the case that thou spekest of. ¶ Doctoure. If a mã stele an horse secretely in the nyghte: It is vsed that there vpon he shalbe Indyted at the kynges suyte / & it is vsed that in that Indytement it shalbe supposed that he suche a daye & place with force & armes / that is to saye / with staues / swordes / & knyues. && felonously stele the horse agaynst the kinges peace / & that fourme muste be kepte in euery Indytement / though the fellon had neyther sworde nor other weapõ with hi: but that he came secretely without weapõ Howe can it therfore be excused but that

therein is an vntrouthe. ¶Student. It is nat alleged in the Indytement by matter in dede that he had suche weapon / for the fourme of an Indytement is this. Inquiratur pro domino Rege si. A. tali die & Anno apud talem locum vi & armis videlicet gladius &c. talem equam talis hominis felonice cepit. &c. And than the twelue mē be onely charged with the effect of the byl. That is to saye/whether he be gylty of y^e^ felonye or nat/& nat whether he be gyltye vnder suche maner and fourme as the bylle specifieth or nat / and so whan they saye (billavera) they saye trewe as they take the effecte of the bylle to be. And therefore if there were false latine in the byll of Indictement: & the Jury sayth (bil la vera) yet theyr verdit is trewe/for theyr verdite stretcheth nat to the trouth or falsehede of the latine: but to the felonye/ ne to the fourme of the wordes: but to the effect of the mater/& that is to enquyre whether there were any suche felonye done by that person or nat/& though the byll vary from the day/fro the yere / & also from the place where the felony was done in / so it vary nat fro the Shyre y^t^ the felony was done in. And the Jury saythe (billa vera) they

hane gyuē a trew verdite/for they are bō
de by theyr othe to gyue theyr verdite ac-
cordinge to the effecte of the byll: & nat ac-
cordinge to the fourme of the byll. And so
is he that maketh auow boūde likewyse to
that that by the law is the effecte of his a-
uowe/ & nat onely to the wordes of his a-
uow. As if a man auowe neuer to eat whyte
meate/ yet in tyme of extreme necessitie he
may eate whyte meat rather thā dye & nat
breke his auow thoughe he affermed it
with an othe/ for by the effecte of his ad-
uowe: extreme necessitye was excepted:
though it were nat expressely excepted in
the wordes of the auowe/ and so lykewyse
though yᶜ wordes of the byl be to enquire
whether such a mā such a daye & yere &
in such a place dyd such a felony/ yet the
effecte of the byll is to enquyre whether he
dyd the felony withi the shyre or no/ & ther
fore the iustices before whome such indi-
temētes be takē: most comōly enfourme yᶜ
Jury that they are boūde to regarde the
effecte of the byll & nat the fourme. And
therfore there is no vntrouthe ī this case:
neyther in hym that made the byll: ne yet ī
the iury as me semeth. ¶ Doctour. But if
the partye yᵗ ought the horse bryng an ac-

cion of treſpas & declareth that the defen-
daunt toke the horſe with force & armes:
where he toke hi without force & armes.
Howe may the playntyfe there be excuſed
of an vntruthe. ¶ Studēt. And if the plai-
tyfe ſurmit an vntruthe/what is that to yᵉ
court or to the lawe/for they muſt beleue yᵉ
playntyfe tyll that that he ſayth be denied
by the defendant. And yet as this caſe is:
there is no vntruth in the playntyfe to ſay
he toke the horſe with force & armes thou-
ghe he came neuer ſo ſecretely & without
weapon / for euery treſpas is in the lawe
done with force & armes/ſo that if he be at
taited & foūde gyltie of yᵉ treſpas:he is at
taynted of the force & armes. And ſyth the
lawe adiugeth euery treſpaſſe to be done
with force: therefore the playntyfe ſayth
trewely that he toke hym with force as
the lawe meneth to be force. For thoughe
he toke the horſe as a felon:yet vpon that
felonouſe takynge: the owner may take
an accion of treſpaſſe & if he wyll for euer-
ry fellony is a treſpaſſe and more. And
ſo I haue ſhewed the ſome parte of my
mynde to proue that in thoſe caſes there
is no vntrouthe neyther in the parties/
neyther in the Jurye / nor in the lawe.

lawe. Neuertheleſſe at a better leaſure I wyll ſhewe the my mynde more fully therin with good wyl as thou haſte promyſed me to do in the caſes of the colours of the aſſiſe & of the ouſtre that be before reherſed.

☞ The.lvi. queſtion of the Doctour whether the ſtatute of.xlv. of Edwarde the thyrde of Silua cedua ſtande with cõſcience. The.lv. Chapitre.

Doctour. In the.xlv. yere of the reygne of kynge Edwarde the thyrde/ it was enacted that a prohibicõ ſhuld lye where a man is empleded in the courte criſtien for diſmes of woode of the age of.xx. yere or aboue by the name of Silua cedua/ howe may that ſtatute ſtande with conſcience that is ſo directely agaynſt the lybertye of the churche & that is made of ſuche thynges as the parlyament had no auctorite to make any lawe of. ¶ Studẽt. It appereth in the ſayde ſtatute that it is enacted that a prohibicion ſhulde lye in y^t^ caſe as it had vſed to do before that tyme & if the prohibicion lay by a preſcripcõ before that ſtatute why is nat thã the ſtatu-

te good as a confirmacion of that prescrip cion. ¶Doctour. If there were suche a prescripcion before that statute yᵗ prescrip cion was voyde/for it prohibiteth the pay ment of tythes of trees of the age of.xx. ye re or aboue/& payenge of tythes is groun ded as well vpon the lawe of god as vpon the lawe of reason & agaynste tho lawes liet no prescripcion as it is holden moste comōly by all mē. ¶Studēt. That there was suche a prescripcion before the sayde statute/& that if a man before the sayd sta tute had ben suyd in the spirituall courte for tythes of wode of the age of.xx. yere or aboue that a prohibicion lay/ appereth in the sayd statute/& it can nat be thought yᵗ a statute that is made by authoritie of the hole realme / as well of the kynge & of the lordes spirituall & tēporall as of all the co mons / will receyte a thynge agaynste the trouth. And ferthermore I can nat se how it can be grounded by the lawe of god or by the lawe of reason that he tenthe parte shulde be payed for tythe & none other por cion but that but I thynke that it be grou ded vpō the law of reason that a mā shulde gyue some reasonable porcion of his goo des temporall to them that mynistre to

hym thynges ſpirituall / for euery man is
boũde to honour god of his proper ſubꝭ-
ce/ & the gyuyng of ſuche porcion hath nat
ben onely vſed amonge faythfull people/
but alſo amõg vnfaythfull people as it ap
pereth Geneſis.xlviii. where corne was gy
uẽ to the preſtes in Egipte yᶜ of comõ bar
nes. And ſaint Poule in his epiſtles affer-
meth the ſame in many places / as in his
fyrſte epiſtle to the Corinthies the.ix.cha-
pitre where he ſayethe he that worketh in
the churche ſhall eate of that yᵗ belongeth
to the churche. And in this epiſtle to the
Galathes the.vi.chapitre he ſayth/ let hi
that is inſtructed in ſpirituall thynges de-
parte of his goodes to hym that inſtructed
hym. And ſaynte Luke in the.x. chapitre
ſayth that the workmã is worthy to haue
his hyre/all whiche ſaynges may right cõ
uenently be taken & applied to his purpo-
ſe that ſpiritual men whiche miniſtre to ye
people ſpirituall thynges/ought for theyr
miniſtracion to haue a competent lyuynge
of them that they miniſter to. But yᵗ the
x.parte ſhulde be aſſigned for ſuche a por-
cõ & neyther more nor leſſe. I can nat per
ceyue that yᵗ ſhulde be groũded by the law
of reaſon nor immediatly by yᶜ law of god

for before the law writtē there was no certayne porciō assigned for the spirituall ministres neyther the .x. parte nor the.xii. parte vnto the tyme of Jacob/ for it appereth Gene.xxviii. that Jacob auowed to paye Dismes whiche was amonge the Jewes for the.x.parte/ if our lorde prospered hym in his iourney/ & if the.x.parte had bē his dutye before that auowe/it had ben in vayne to haue auowed it/and so it had if it had ben grouded by the law of reason/ & as to that that is spokē in the Euangelistes & in the newe law of tythes/it belongeth rather to the gyuinge of tythes in the tyme of the olde lawe than of the newe lawe as appereth Mathe.xxiii. & Lu.xi.where our lorde speketh to the phariseis sayth/wo be to you phariseis that tythe myntes/rewe/ & herbes/& forgette the Jugement and the charite of god/these it behoueth you to do and the other nat to omitte/that is to say/ it behoueth you to do iustice and charite of god and nat to omitte payenge of tythes though it be of smale thynges as of myntes/rewe/herbes/& suche other. And also that y^t the phariseis sayth Luce .xviii. I paye my tythes of all that I haue/ is to be referred too the olde lawe nat to the tyme

to the tyme of the newe lawe. Therfore as I take it that the payinge of tythes or of a certayne porcion to spirituall mē for theyr spirituall ministracion to the people/hath ben grounded in diuers maners. Fyrste before the lawe written a certayne porcion sufficient for the spirituall ministers was due to them by the lawe of nature/whiche after them that be lerned in the lawe of ye realme is called the lawe of reason / & that porcion is due by all lawes & in the lawe written the Jewes were bounde to gyue the .x. parte to theyr prestes as well by the sayde auowe of Jacob as by the lawe of god in the olde testamente called the Judicials. And in the newe law the payenge of the tenth parte is by a lawe that is made by the churche. And the reason wherfore the tēthe parte was ordeyned by the churche to be payde for the tythe was this.
There is no cause why ye people of ye new lawe ought to paye lesse to the ministers of the newe lawe/ than the people of the olde testament gaue to the ministrers of the olde testamente / For the people of the newe lawe be bounde to greater thynges/ than the people of the olde law were as it appereth. Mathe. v. where it is sayde/but

your good workes haboũde aboue the wor
kes of the scribes & the pharisees/ye maye
nat entre in to the kyngdome of heuen.
And yᵉ sacrifice of the olde law was nat so
honourable as the sacrifice of the new law
is/ for the sacrifice of the olde lawe was
onely the figure/ & the sacrifice of the new
lawe is the thynge that is figured/yᵗ was
the shadowe/this is the trouth. And ther=
fore the churche vpon that reasonable cõ=
sideracion ordeyned that the.x.parte shuld
be payde for the sustenaunce of the mini=
sters in the newe lawe as it was for the su
stenaunce of the ministers in the olde law/
& so that lawe with a cause may be encrea
sed or minished to more porcion or to lesse
as shalbe necessary for them. ¶ Doctoure.
It appereth Genesis.xiiii.that Abraham
gaue to Melchisedech dismes & that is ta=
ken to be the.x.parte & that was longe be=
fore the lawe writtẽ/ & therfore it is to sup
pose that he dyd that by the lawe of god.
¶ Student. It appereth nat by any scrip
ture that he dyde that by the commaunde
ment of god/ne by any reuelacio. And ther
fore it is rather to suppose that he dyd par
te of duyte & parte of his owne fre wyl/for
in that he gaue the dismes/as a resonable

porciõ for the sustenaũce of Melchisedech & his ministers/ he dyd it by commaundemẽt of the lawe of reason as before appereth/but that gaue the.x. parte that was of his free wyll/& by cause he thought it sufficient & resonable but if he had thoughte the.xii. parte or the.xiii. parte had sufficed might haue gyuen it & that with good conscience. And so I suppose that in the newe law the gyuinge of the.x. parte is by a law of the churche & nat by the law of god/ onelys it be taken that the lawe of the church is the lawe of god/ as it is somtyme taken to be/but nat appropriatly nor immediatly for that is takẽ appropriatly to be the law of god/that is conteyned in scripture that is to say: in the olde testamẽt or in the new.

¶ Doctour. It is somwhat daungerous to saye that tythes be grounded onely vpõ the lawe of the churche/ for some men as it is sayd say that mãnes law byndeth nat i conscience/ & so they might happen to take a boldnes therby to denye theyr tythes.

¶ Studẽt. I truste there be none of yt opinion/ & if there be it is greate pytye. And neuertheles they may be cõpelled in that case by the law of the churche to pay their tythes as well as they shuld be if payenge

of tythes were grounded meerely vpō the lawe of god. ¶ Doctour. I thynke well it be as thou sayste & therfore I holde me cō-tended therin. But I praye the shewe me thy mynde in this question/if a hole countrey prescribe to pay no tythes for corne or hey nor suche other/whether thou thynke that that prescripcion is good. ¶ Studēt. That question dependeth moche vpon yt that is sayde before/for if payenge of the.x.parte be by the lawe of reason or by the lawe of god/than the prescripcion is voyde but if it be by the lawe of man/than it is a good prescripcion so that the ministers haue a sufficient porcion beside. ¶ Doctoure. Johā gerson whiche was a doctour of diuinite in a treatice that he named regule morales: sayth that dismes be payd to prestes by the lawe of god. ¶ Studēt. The wordes that he speketh there of yt matter be these(Solutio decimaꝝ sacerdotibꝰ est de iure diuino quatenꝰ ide sustentētur: sed quotā hāc vel illā assignare: aut i alios reditus cōmutare positiui iurꝫ existit). That is thus moche to say/the payēge of dismes to prestes is of the lawe of god / that they maye thereby be susteyned / but to assigne thꝫ porciō or that/or to chaūge it to other

rentes/that is by the lawe positiue / & if it shulde be taken that by that worde: decimarum: whiche in englysshe is called dysmes or tythes/that he ment the tent parte & that that.x.parte shulde be payde for tythe by the lawe of god/ than is the sentẽce that folowyth after agaynst that sayenge/ for as it appereth aboue the text sayth afterwarde thus/but to assigne this porcion or that or to/chaunge it in to other rentes belongeth to the lawe positiue / that is to the law of man/& if the.x.parte were assigned by god / than may nat a lesse parte be assigned by the lawe of man for that shuld be contrary to the lawe of god/& so it shuld be voyde. And me thynketh that it is nat likely that so famous a clerke wolde speke any sentence contrary to the law of god or contrary to that he had spoken before/& to proue that he mente nat by that terme: decime: that dismes shulde alway be takẽ for the tenth parte / yet appereth in the .iiii. parte of his workes in the.xxvii.title: litte ray/where he sayth thus(Nõ vocatur porcio curatis debita propterea:decime: eo qõ semper sit decima pars immo est interdũ vicesima aut tricesima). That is to say y^{e} porcion due to curates /is nat therfore cal-

led dismes for that it is alway the.x.parte for somtyme it is the.xx.or the.xxx.parte/ & so it appareth that by this worde decimarum: he mente in the texte before reherced a certayne porcion and nat precisely the.x. parte/& that that porcion shulde be payde to prestes by the lawe of god to susteyne them with/takynge as it semeth the lawe of reason in that sayēge for the law of god as it maye one way be well & conuenietly taken: bycause the lawe of reason is gyuen to euery reasonable creature by god. And than it foloweth pursuecantlye that it belōgeth to the lawe of mā/to assigne this porcion or that as necessite shall requyre for theyr sustenaunce / & than his sayenge agreeth well to that that is sayde before/yt is to saye / that a certayne porcion is due for prestes for theyr spirituall ministracīō by the law of reason. And than it wolde folowe therupon that if it were ordeyned for a lawe yt al payēge of tythes shuld fro hēsforth cesse/& that euery curate shulde haue assigned to hym suche certayne porcion of lande rent or annuite as shulde be sufficiēt for hym & for suche ministers as shulde be necessary to be vnder hym accordynge to the nombre of the people there/or yt euery

parisshene or housholder shulde gyue a cer-
tayne of money to that vse: I suppose the
lawe were good/& that was the meanyng
of Johā gerson as it semeth in his wordes
before reherced/where he saith/but to chaū
ge tythes in to other rentes is by the law
positiue/that is to say by the law of man.
And so me thynketh that if a hole coūtrey
prescribe to be quyte of tythes of corne or
gres so that the spirituall ministers haue
a sufficient portion beside to lyue vpon/yt
it is a good prescripcion/& that they shulde
nat offende/ that in suche coūtreys payde
no tythes/for it were harde to say that all
the men of italie or of the est parties be
dampned bycause they pay no tythes but
a certayne porciō after the custome there-
re certayne it is to pay suche a certayn por-
cīō as well they as all other be boūde: if yc
churche aske it/any custome nat withstan
dyng/but if yc church aske it nat it semeth
yt by that nat asking yc church remitteth
it/& an crāple therof we may take of yc apo
stle ꝑpoule yt though he might haue taken
his necessari liuing of thē that he preched
to/yet he toke it nat/& neuertheles they yt
gaue it him nat dyd nat offēde bycause he
dyd nat aske it/but if one mā i a towne wol

de ꝓscribe to be discharged of tythes of corne & gres/me thinketh the ꝓscripcō is nat good/oucles he cā proue that he recōpenseth it in another thyng / for it semeth nat reasonable that he shuld paye lesse for hys tythes thā his neyghbours do/seyng that the spirituall mīnistres are boūde to take as moche diligence for hym as they be for any other of y^e parysshe/wherfore it might stāde with reason that he shuld be cōpelled to pay his tythes as his neyghbours do/ oucles he cā proue that he payeth in recō-pēce therof more thā the.x. ple in another thynge. Neuertheles I leue that mater to y^e iugemēt of other /& thā for a further pro ffe that the said ꝓscripcō of nat payēge tythes for trees of.xx.yere & aboue/thoughe it were nat good of corne & gres shulde be good/some make this reasō/they say that there is no tythe but it is eyther a prediall tythe a psonal tythe/or a mixt tithe/& they say y^t if a tythe shuld be payd of trees whā they be so sold: that y^t tythe were nat a p-dial tythe/ for y^e pdial tythe of trees is of such trees as brig forth frutes & ēcreasse yerely/as apple trees/nut trees/pere trees/& such other wherof y^e pdial tythe is the apples/nutz/perz & such other frutz as com of

them yerely & whan the frutes be tithed: if the owner after fell the trees / there is no tythe due therby / for two tythes may nat be payed of one thyng / & of these tythes (yt is to saye) of prediall tythes was the commaundement gyuen in the olde law to the Jewes / as appereth Leuitici. xxvii. where it is sayd (Omnes decime terre: siue de pomis arborum: siue de frugibus: domini sũt: & illi sanctificantur) that is to saye / all tythes of the erthe eyther of apples / of trees / or of graines be our lordes / & to hym they be sanctified / and though the said lawe speketh onely of apples / yet yt was vnderstãde of all maner of frutes. And bycause yt sayth that all the tythes of the erthe be our lordes: therfore calues / lambes / & such other muste also be tythed / & they be called by some men prediall tythes / that is saye / tythes that come of the grounde / howbeit thy call them onely predialles mediate / & they be the same tythes that in this writyng be called mixt tythes / & the other tythes (that is to saye) tythes of apples and corne & suche other: be called predialles immediate / for they come immediatly of the grounde / & so do nat mixte tythes as euidently appereth. ¶ Doctoure. But what

thinkest thou shalbe the prediall tythes of
asshes/elmes/salowes/alders/& such other
trees as bere no frutes/wherof any profite
cometh/ why shall nat the .x. parte of the
selfe thynge be the tythe therof if they be
cut downe as well as it is of corne & gras.
¶Student. For I thynke that there is
to that intēte great diuersite betwene corn
nes/ & trees /& that for diuers considera-
cions wherof one is this. The propertie of
corne & gras is nat to growe ouer one yere
& if it do: it wyll perysshe & come to nought
& so the cuttynge downe of it: is the perfec
cio & preseruacio therof/& the special cause
that any encrease foloweth of the same.
And therfore the.x.parte of that encrease
shalbe payde as a predyall tythe / & there
no deduccion shalbe made for the charges
of it/& so it is of shepe & beastes that muste
be taken & kylled in tyme/for els they may
perysshe & come to nought. But whā trees
be felled: that fellynge is nat the perfeccio
of the trees / neit causeth nat them to en-
crease but to decay / for most comonly the
trees wolde be better if they might growe
styll. And therfore vpō that y^t is the cause
of the decaye & distruccio of them it semeth
there can no prediall tythe ryse/& some mē

say that this was the cause why our lorde in the said chapitre of Leuitici. xxvii. gaue no cõmandement to tythe the trees but ye frutes of the trees onely. ¶ Doctour. It appereth in paralapo. xxxi. that the Iewes in the tyme of the kyng Ezechias offered in the temple all thynges that the groude brought forth/ & that was trees as well as corne & gres. ¶ Studẽt. It appereth nat that they dyd that by the cõmãdement of god & therfore it is lyke that they dyd it of theyr owne deuocion & of a fauour that they had aboue theyr dutye to the repayrynge of the temple whyche the kynge Ezechias had thẽ cõmanded to be repayred/ & so that text proueth nothynge that tythe shuld be payde for trees/ & therefore they say ferther that trouth it is that if a man to the entent he wolde pay nor tythe; wolde wilfully suffer his corne & gres to staude still & to perisshe/ he shuld offende cõscience therby / but thoughe he suffer his trees to stãde still cõtinually without felynge bycause he thiketh a tythe wold be asked if he felled thẽ (so y^t he do it nat of an euill will of the curate) he offẽdeth nat i cõscience/ ne he is nat boũde to restitucio ther fore as he shuld be if it were of corne & gres

as before apereth/ & another diuersite is this
In this case of tythe wode/ the tythe ther
of wolde serue so litle so that purpose that
tythes be payd for: that it is nat likely yᵗ
they yᵗ made yᶜ law for paymēt of tythes
entēded that any tythe shuld be payde for
trees or wode/ for the spirituall ministers
muste of necessite spende dayly & wekely/ &
therfore the tythe of trees or wode that co
meth so seldō wold serue so litell to the pur
pose that it shuld be payd for that it wolde
nat helpe thē in theyr necessite to yᵗ if they
shulde be driuen to truste therto though it
might helpe hi in whose time it shulde hap
pē to fall yet it shuld deceyue the that tru
sted to it in the meane tyme: & also shulde le
ue the paryshe without any to minister to
thē. ¶ Doctor. I wolde well agre that for
trees that bere frute there shuld no predial
tythe be payd whā they be solde/ for the pre
diall tythe of thē is the frutes that come of
thē & so there cā nat be two p̄diales of one
thige/ as thou hast sayd. But of other trees
that bere no frute me thinketh that a p̄dial
tythe shuld be payd whā they be solde/ & so
it appereth that there ought to be by yᶜ cō
stitucio prouinciall made by the reuerente
father in god Roberte whyncelse late

archebisshope of Cauntorbury where it is sayd & declared that (silua cedua) is of euery kynde of trees that haue beyng in that that they shuld be cutte or that be able to be cutte wherof we wyll sayth he that the possessoure of the sayd woodes be cõpelled by the censures of the churche to pay to y^e parysshe churche/or mother churche the tythe as a reall or prediall tythe & so by vertue of that constitucion prouinciall a prediall tythe muste be payde of suche trees as haue no frute / for I wolde well agre that the sayd constitucion prouinciall stretched nat to trees that bere frutes though the wordes be general for all trees as before appereth. ¶Student. I take nat the reason why a prediall tythe shulde nat be payde for trees y^t bere frute to be bycause two prediall tythes can nat be payde for one thynge/for whan the tythe is payd of lambes yet shall tythe be payde of wolle of the same shepe/for it is payde for a nother increase/& so it might be sayd that the frut of a tree is one encrease & the fellyng a nother/but I take the cause to be for the two causes byfore reherced & also for as moche as the fellynge is nat properly an increase of the trees but a distrucciõ of the trees as

it is sayd before. And ferther I wolde here thy mynde vpon the said cõstitucion prouincial whiche wyll that tythe shulde be payde for trees by the possessoures of the woode that if the possessour sell the woode for .C.li. & gyue the byer a certayne tyme to sell it in, what tythe shall the possessour paye as longe as the woode standeth.

¶ Doctour. I thynke none for the predial tythe cometh nat tyl the woode be felled & a personall tythe he can nat pay / no more than if a man plucke downe his howse and selleth it, for if he sell all his lande, in whiche cases I agre well he shall paye no tythe neyther predial nor personall.

¶ Student. And than I put case that the byer selleth the woode agayne as it is stãdyng vpon the groũde to a nother for .cc. li. what tythe shalbe payde than. ¶ Doctoure. Than the fyrste byer shall pay tythe of the surplusage that he taketh ouer the .C.li. that he payde as a personall tythe.

¶ Student. And than if the seconde byer after that cut it downe & sell it whan it is cut downe for lesse than he payd, what tythe shall than be payde. ¶ Doctour. Thã shall he that selleth them paythe tythe for the trees as a predial tythe. ¶ Student.

I can nat se howe that cā be for he nether hath the trees that the predial tithe shulde be payd for if any oughte to be paide/ nor he is nat possessour of the groūd where the trees grow: & therfore if any predial tythe shuld be payd it shuld be payd eyther by ye fyrst possessour by reason of the wordes of the sayd constitucio prouincial whiche be yt the tythe shalbe payd by the possessoure of the wood/or by the last byer by cause he hath the trees that shuld be tythed & by ye fyrst possessour the tythe can nat be payde as a pdial for he cut nat thē downe ne they were nat cut downe vpon his bargayne/ & by the laste byer it cā nat be paydē neyther as a predial tythe for the sayd constitucion sayth yt the possessours of the wodes shuld be cōpelled to pay it. And therfore I suppose that the trouth is that in that case non the shalbe payde/ for as to the last seller he shall pay no personall tithe for he gayned nothyng as it appereth before/ & no pdiall tithe shalbe payd/ for it shuld be agaynst ye sayd prescripcio/ & also the cuttinge downe is the distruccion of trees & nat they pser-uacion as is sayd before. ¶ Doctour. Thā takest thou the sayd constitucion to be of smale effect as it semeth ¶ Studēt. I take

it to be of this effect that of woode abouc. xx.yere it bindeth nat bycause it is cõtrari to the comõ law & to the sayd prescripcion that stãdeth good in the comõ law/ but of wood vnder.xx.yere wherof tithe hath bẽ accustomed to be payd: yᵉ cõstitucio is nat agaynst the sayd pscripcion bycause paiẽg of tythe vnder.xx.yere is nat prohibit but suffred by the sayd statute howbe it some say that by the very rigour of the comon lawe tithes shuld nat be payd for wood vnder.xx.yere no more than for abouc.xx.yere & that a phibicio in that case lieth by yᵉ comon lawe / neuertheles bycause it hath ben suffered to the cõtrary & that in many places tithe hath ben payd therof. I passe it ouer but where tithe hath nat be payd of wood vnder.xx.yere. I thinke none ought to be payd at this day in law nor conscience: but admitte it that the sayd constitucio taketh effecte for paymẽt of tithe wood vnder.xx.yere as of a predial tithe/yet I can nat se how the tithe therof shuld be payde by the possessours of the wode if he sell thẽ but that it shuld be payd rather by hym yᵗ hath the trees/for the constitucion is that the tythe shalbe payde as a reall or a predial tithe/& that is the.x.parte of the same

trees as it is of corne/ & if a man bye corne vpon the groũde the byer shall pay the tythe & nat the seller & so it shulde seme to be here & what the constitucion mente to decree the contrari in tythe wode I can nat tell oneles the meanyng were to enduce yᵉ owners to pay tyths of great trees whan they fell thē to theyr owne vse whiche me thynketh shulde be very harde to proue to stande with reason though the sayd statute had neuer be made as I haue sayd before. And ferthermore I wolde here vnder correccion moue one thynge & that is this that as it semeth they yᵗ were at the makynge of the sayde constitucion that knewe the sayd prescripcion dyd nat folow yᵉ directe order of charite therin so perfitely as they might haue done / for whan they made the sayd constitucion prouinciall directely agaist yᵉ said p̄scripciō/ they set law agaist custome/ & power agaist power & in maner the spiritualtie agaist the tẽporalte/ whereby they might well knowe that greate variace & sute shuld folowe/ & therfore if they had clerely sene that the sayde prescripcion had ben agaynste conscience they shulde fyrste haue moued the kynge & his counsayle & the nobles of the realme to

haue assented to the reformacion of that p̄
scripcion & nat to make a lawe as it were
by authorite & power agaynst the prescrip
cion & than to threte the people & make thē
byleue that they all were accursed yt kept
the sayd prescripciō or that mayntayne it/
& it semeth to stande hardely with conscie
ce to reporte so many to stāde accursed for
folowinge of the sayd statute & of the sayd
p̄scripcion as there do & yet to do no more
than hath be done to bringe them out of it
¶ Doctour. Me thinketh that it is nat cō
uenient that lay mē shuld argue the lawes
& the decrees or constituciōs of the church
& therfore it were better for them to gyue
credence to spirituall rulers that haue cu-
re of theyr soules than to truste to theyr
owne opinions/ & if they wolde do so than
suche matters wolde moche the more ra-
ther cesse than they will do by suche reaso
nynge. ¶ Studēt. In that that pertayneth
to the articles of the fayth I thynke the
people be bounde to byleue the church /for
the churche gadered to gyder in the holy
ghoste can nat erre in suche thynges as be
longe to yᶜ catholike fayth but where the
churche maketh any lawes whereby yᶜ goo
des or possessions of the people maye be

bounde/or by this occasion or that may be taken fro them there the people may lawfully reason whether the lawes bideth thē or nat for in suche lawes the churche may erre & be deceyued & deceyue other eyther for singularite or for couetyce for some other cause/& for that consideracion it perteyneth moste to thē that be lerned in the lawe of the realme to knowe suche lawes of the churche as trete of the orderyng of landes or goodes & to se whether they may stande with the lawes of the realme or nat & therfore it is necessarie for them to know the lawes of the churche that treate of dismes of executours of testamentes of legacies bastardye matrimonie & diuers other wherin they be bounde to knowe whā the lawe of the church must be folowed & whā the law of the realme/wherof bycause it is nat our purpose to treate. I leue to speke any more at this tyme/and wyll resorte agayne to speke of tythes /wherin some mē say y^t of tynne/cole/& leade no tythe shuld be payde whan they be solde by the owner of the grounde bycause it is parte of the enheritaunce & it is more rather a distruccion of the enheritaunce than an encreace/ & therfore they say that if a mā take a tyn

werke & gyue the lorde the tenthe dysshe ac cordynge to the custome that the lord shall pay no tythe of that tenth dysshe neyther prediall nor personall: but if the other that taketh the werke haue geyns & aduauntage by the werke it semeth that it were nat agaynste reason that he shuld pay a personall tythe of his geyns the charges deduc te. ¶ Doctour. I pray the shewe me fyrst what thou takest for a personall tythe and vpon what grou̅d personal tithes be payd as thou thinkest so that one of vs mystake nat a nother theri̅. ¶ Stude̅t. I will with good wyll & therfore thou shalt vnderstā̅de that as I take it personall tythes be nat payde for any increase of the grounde/but for suche pfite as cometh by the labour or industrie of the person/ as by byeng & sellynge & suche other/ & suche personall tythes as I take it muste be ordered after ye custome & the churche hath nat vsed to leuye those tythes by compulsion but by conscience of the parties/ neuertheles Raymond sayth that it is good to pay personal tythes or with the assente of the person to distribute them to pore me̅/ or els to pay a certayn porcio̅ for the hole/but as Innoce̅ sayth/where ye custome is yt they shuld be

payde the people be bounde to pay the as well as predialles / the expences deducte/ howe be it in the churche of Englãde they vse to sue for suche personall tythes as wel as for predialles & that is by reason of a cõ stitucio̅ prouinciall that was made by Ro bert wynchelley late archebisshope of Cañ torbury/by the whiche it was ordeyned y^t^ personall tythes shuld be payd of craftes & marchandyse/& of the lucre of byeng & sel= linge/& in lykewise of carpẽters /smythes/ weuers/masons & all other that worke for hyre that they shall pay tythes of theyr hy re except they will gyue any thyng certay ne to the vse or to the light of the churche if it so please the person/& in another place the sayd archebisshoppe sayethe that of the pawnage of woodes & suche other thiges &c.& of fyllhynges/trees/ bees/ dowues / & of diuers other thinges there remembred/ & of craftes/& of byenge & sellynge & of the profites of diuers other thinges there re= ceyted/euery man shuld holde satisfi com= petently to the churche/to the whiche they be bounde to gyue it of right/no expences by the gyuinge of the sayd tythes deducte or withholden/but onely for the payment of tythes of craftes & of byenge & sellinge/

¶by reason of the sayde constitucions pro-
uincials somtyme sutes be taken in the spi
rituall court for personall tythes/& therof
many men do meruayle/bycause the deduc
cions many tymes must be referred to the
conscience of the parties. And they mer-
uayl also why a law shuld be made in this
realme for paige of personall tythes more
than there is in other contreys. And here
I wolde moue the ferther in one thyng cō
cernyng suche personall tythes to knowe
thy mynde therin/& that is/ if a man gyue
to another an horse/& he selleth that horse
for a certayne summe/ shall he paye any ty
the of that summe. ¶Doctoure. what thi
kest thou therin. ¶Student. I thike that
he shall pay no tythe/for there as I take it
the profite cometh nat to hi by his owne
industri but by the gyfte of an other / & as
I take it: personall tythes be nat payd for
euery profite or aduauntage that cometh
newly to a man except it come by his own
industri or labour & so it dothe nat here.
And also if he shulde paye tythe of that he
solde the horse for: he shuld pay tithe for the
very hole value of the thinge. And as I ta
ke it: the personall tythes for bycnge & sel-
linge shall neuer be payde for the value of

the thynge / but for the clere geynes of the thynge / and therfore I take the cases before reherced where a man selleth his lande or pulleth downe a house and selleth the stuffe / that he shulde there paye no tythe / that it is there to be vnderstande that he hath the lande or howse by gyfte or by discent / for if a man bye lande / or bye the tymber & stuffe of a howse and sell it for agayn I suppose that he shulde paye a personall tythe for that gayne / and this case is nat lyke to a fee or annuite graunted for counsayle where the hole fee shalbe tythed / for the charges deducte or some certayn some for it by agrement / for there the hole fee cometh for his counsayle whiche is by his owne industrie. But in the other case it is nat so / and the same reason as for the personall tythe might be made of trees whan they descende or be gyuen to any man and he selleth them to a nother that he shall paye no personall tythe. ¶ Doctoure. Me thynketh that if the horse amende in his keppynge & than he sell the horse / that than the tythe shalbe payd of that that the horse hath encreased in value after y^c gyft & so it may be of trees that he shall pay tythe of that that the trees be amended after

the gyft or discent. ¶ Student. Than the tythe muste be the.x. parte of the encrease the expences deducte/and than of trees the charges muste also be deducte / for it is than a personal tythe/and there is no tree that is so moche worthe as it hath hurte the grounde by the growynge/ & therfore there can no personal tythe be payd by the owner of the grounde whan he selleth the though they haue increased in this tyme. Neuertheles I will speke no ferther of y^t matter at this tyme / but wyll shewe the that if tyme / lede / cole / or trees be solde that a myrte tythe can nat growe therby/ for a myrt tythe is properly of calues / lābes/pygges/& suche other that come part of the groūd that they be fedde of/& part of the kepyng industri & ouersight of the owners as it is sayd before/but tynne / lede/& cole are parte of the groūde & of the freholde/& trees growe of thē selfe / & be also annexed to the freholde & will growe of them selfe/& also the mirte tythe muste be payde yerely at certayne tymes appoīted by the law or by custome of y^e cōtrey/ but it may happē that tine/lede/cole/ & trees shall nat be felled nor taken in many yeres/& so it seweth it can nat be any mixt tythe / & these

be some of the reasons whiche they that
wolde mayntayne that statute & prescrip-
cion to be good: make to prouf theyr intēt
as they thynke. ¶ Doctour. what thynke
they if a man sell the loppes of his woode
whether any tythe ought there to be payd
¶ Student. They thynke all one lawe of
the trees & of the loppes. ¶ Doctour. And
if he vse to fell the loppes ones in .xii. or.
xvi. yere/what holde they thā. ¶ Studēt.
That all his one. ¶ Doctour. And what
is theyr reason why tythe ought nat to be
payde there as well as for woode vnder.
xx. yere. ¶ Student. For they say that the
loppes are to be taken of the same condi-
cīō as the trees be what time so euer they
be felled/and that no custome will serue in
that case agaynst the statute/ no more thā
it shuld do of great trees. ¶ Doctour. And
what holde they of the barke of the trees.
¶ Studēt. Therin I haue nat herde theyr
opinions/but it semeth to be one lawe with
the loppes. ¶ Doctour. I perceyue wel by
that thou hast sayd before that thy mynde
is that if a hole contrey prescribe to be qui
te of tithes of trees/corne/&gres/or of any
other tythes: that that pscripcion is good
so that the spirituall ministers haue suffi-

cient beside to liue vpō/wilt thou nat meue so. ¶ Student. yes verely. ¶ Doctor. And than I wolde know thy mynde if any mā contrary to that prescripcion were sued in the spirituall court for corne & gres or any other tythes whether a prohibicion shulde lye in that case as it dyd after thy mynde before the sayd statute where a man was sued in the spirituall court for tythe wood. ¶ Studcut. I thynke nay. ¶ Doctoure. And why nat there as well as is dyd where a man was sued for the tithe woode. ¶ Studēt. For as I take it: there is great diuersiti betwene the cases & that for this cause/there is a maxime i the law of Englande that if any sute be taken in the spirituall court whereby any goodes or landes might be recouered/whiche after the grōdes of the lawe of the realme ought nat to be sued there: though percase the kynges court shall holde no plee therof: that yet a prohibicion shuld lye / & after whan it had continued longe that no tythes were payd of wood bycause of the sayd prohibicion & that after by processe of time some curates began to aske tithes of wood contrary to the law & cōtrary to the sayd prescripcion: so that variaūce begā to ryse betwene cu-

rates & theyr parysshens in that behalfe/ than for appeasinge of the sayd variaunce the sayd statute was made/ & that as it semeth more at the callynge on of the spiritualty thā of the tēporalty/ for the statute doth nat expressely graunt that the prohibicion in that case of tythe wood shulde lye so largely as some saye it laye by the lawe: howebeit/it doth nat restrayn the comon lawe therin as it appereth euidently by yᵉ wordes of the statute/ & so after some men it appered before the statute & also after yᵉ statute as I haue touched before/ that the spirituall courte oughte nat in that case to haue made any processe for tythe wood: & therfore if they dyd a prohibicion laye by the comon lawe: & lyke lawe is if the spirituall courte make processe vpon suche a legacy as by the law of the realme is voyde. As if a man bequethe to one a nother mānes horse/ & the spirituall courte therupon maketh processe to execute yᵗ legacy: there a prohibicio lyeth/ for it appereth euidētly in the lybell if all the trouth appere in the lybell that in the law of the realme that legacy is voyd to all entētes. And that he to whome the legacy is made shall neyther haue the horse nor the value of the horse.

And in lyke wyse if a man sell his lande for C.li.& he is sued after in the spirituall court for the tythe of the sayd.C.li.There a prohibicion shall lye / for it appereth in that case opēly in the lybel that no tythe ought to be payd/& that the spirituall law ought nat in that case to make any processe whereby the goodes of hym that solde the lāde myght be taken fro hym agaynste the law of the realme / and vpon this grounde it is that if a man were sued in the spiritual courte nowe sythe the statute for a mortuary that a prohibicion shulde lye/ for it appereth in the lybell: that sythe the statute there ought no sute to be taken for mortuaryes / and the same lawe is if any sute were taken in the spirituall court for a newe duty that is of late taken in some places vpon leases of personages and vycarages whiche is called a dimission noble / for it appereth euidently in the lybell if any be made therupon that no suche processe ought by the lawe of the realme to be made in that behalfe / but in the case of tythe corne / or gresse / or suche other thiges wherei thou haste desyred to know my mynde/there appereth nothyng in the lybel but that the sute thereof of right per-

teyneth to the ſpirituall lawe & ſo for any thynge that appereth the partye maye be holpen in the ſpirituall court by that preſcripcion / and if the caſe were ſoo tarre put that in the ſpirituall court they wolde nat alowe the ſayd preſcripcion/ yet I thinke no prohibicion ſhulde lye / for thoughe the ſpirituall iuges in a ſpirituall matter denye the parties of iuſtice/ yet the kinges lawes can nat reforme that/ but muſte remitte it to theyr conſcience. But if there were ſome remedye prouided in that caſe / it were well done/ for ſome ſaye that in the ſpirituall courte they will admitte no plee agaynſt tythes. And alſo if a compoſicion were made by aſſent of the patrone & alſo of the ordinari bytwene a perſone and one of his paryſſhens that the perſon and his ſucceſſours ſhuld haue for a certayne groũde ſo many quarters of corne for his tythe yerely/ and after contrary to that compoſicion the perſone in the ſpirituall courte aſketh the tythes as they fall/ that in this caſe no prohibiciõ ſhuld lye/ ne yet though the caſe were further put that the compoſicion were pleaded in the courte and were diſalowed/ but all reſteth in the conſcience of the iuges ſpirituall as is ſayde before

howbeit bycause some be of opinion that a prohibicion shulde lye in this laste case / therfore I will referre it to the iugemente of other / but in the case of the prescripcion before rehersed I take it for ye clerer case / that no prohibiciõ shall lye as I haue said before. And I beseche our lorde that this matter and suche other lyke thereto maye be so charitably loked vpon that there be nat here after suche diuisions ne suche diuersities of opinions therein as hath ben in tyme paste wherby hath folowed great costes and charges to many persons in this realme & yt hath moued me to speke so farre in this chapitre and in diuers other chapitres of this presente boke as I haue done / nat entendynge thereby to gyue occasion to any persone to withholde his tythes that of righte oughte to be payde / ne to alter the porcion therein beiore accustomed / but that as me thynketh they oughte to be claymed by the same title as they oughte to be payde / & by none other / & that it may also sõwhat appere yt the sayde statute of .xiv. of Edwarde the .3. was well and lawfully made and vpon a good reasonable consideracion / and that

the sayde prescripcion is good also/so that no man was in any daunger of excommunicacion for the makynge of the sayd statute/nor yet is nat for the obseruyng thereof / ne yet of the sayde prescripcion as it is noted by some persons that there shulde be. And thus I cõmit the vnto our lorde: who euer haue bothe the and me in his blessed kepyng euerlastigly. Amẽ.

Finis.

Here endeth the seconde Dialogue in Englisshe/with newe Addicions betwixte a Doctoure / and a Student in the lawes of Englande. And here after followeth the Table .*.

¶ Tabula.

Here aft folo weth the table with certayne Addicions newly added thereto. And ouer all the Chapitres and questions whiche be newly added: ye shall fynde entitled this worde (Addicion) bothe in the Table and also in the boke.

The introduccion. Fo.2.

¶ The fyrste question of the Student whether the tenãt in tayle after possibilite of issue extinct may with conscience do waste. The. I. chapitre. Fo.4.

¶ what is vnderstãde by this terme whã it is sayd (thus it was at the comon law) The. ii. chapitre. Fo.7.

Dialogue. F.ii.

¶ The seconde question of the Student whether the goodes of mē outlawed be forfet in cōscience as they be by the lawe The.iii.chapitre. Fo.8.

¶ The thyrde question of the Studēt/Is of wast done by a straūger in landes that be in the hādes of perticuler tenaūtes.&c. The.iiii.chapitre. Fo.12.

¶ The.iiii.question of the Student/ whether a mā may with conscience be of coūcell agaynst hym that he knoweth is the heyre of right/but he is certified basterde by the ordinarie.The.v.chapi. Fo.15

¶ The.v.question of the Student / whether a man may with cōscience be of counsayle with a man at the comon lawe knowyng that he hath sufficient matter to be discharged in the chauncery that he may nat pleade at the comon lawe. The.vi. chapitre. Fo.17.

¶ The.vi.questiō of the Studēt/whether a mā may with conscience be of counsayl agaynst the feoffour of truste in an accion of trespas that he bryngeth agaynste his feoffe of trust for takyng the profites. The.vii.chapitre. Fo.19.

¶ The.vii.question of the Studēt if a mā

that by way of distres cometh to his det / but he ought nat to haue distreyned for it what restitucion he is bounde to make.
The.viii.chapitre Fo.21.
¶ For what thynge a man may lawfully distrayne. The.ix.chapi. Fo.23.
¶ The.viii.question of the Student whether executours be bounde in conscience to make restitucion for a trespas done by the testatoure/and whether they be boũde to paye dettes vpon a contracte fyrste / or make the sayde restitucion. The.x. chapitre. Fo.25.
¶ The.ix.question of the Student/ whether he that hath goodes deliuered hym by force of a legaci be bounde in conscīēce to pay a dette vpon a contracte that the testatoure ought/ if the executours haue none other goodes in theyr handes. The.xi. chapitre. Fo.28.
¶ The.x.question of the Student if a mā haue issue two sones & dyed seased of certayne landes in fee the eldest dyeth without issue the tongest recouereth by assise of mortdauncestre the lande with damages fro the dethe of the father / whether he be bounde in conscience to pay the damages

to the executours of the eldest brother for the tyme he leued. The.xii.cha. Fo.31.
¶ The.xi.question of the Student what damages the tenant in dower shall recouer in conscience where hyr husbãde dyed nat seased/ but she demaunded hyr dower and was denyed. The.xiii.chapitre. Folio. 33.
¶ The.xii. question of the Student if a man knowynge a nother to haue right to his lande causeth a fyne with proclamacion to be leuyed accordynge to the statute/and he that hath right maketh no clayme within.v.yeres whether he be barred in conscience as he is in the lawe. The.xiiii.chapitre. Fo.36.
¶ The.xiii. question of the Student / if a man that hath had a chylde by his wyfe do that in hym is to haue possession of his wyfes landes and she dyeth or he cã haue it/whether in conscience he shalbe tenaũt by the courtesy. The.xv.chapitre. Folio. 37.
¶ The .xiiii. question of the Student / if the grauntour of a rẽte enfeffe the graũte of the rente of parte of the lande. &c. whether the hole rente be extincte in conscièce

as it is in the lawe. The.xvi.chapitre
Folio. 41.
¶ The xv.question of the Student / if he that hath a rent out of.ii. acres be named in a recouerye of the one acre he nat knowynge thereof.&c. whether his hole rente be extincte in conscience.&c. The.xvii. chapitre. Fo.43.
¶ The.xvi.question of the Student / if a man haue a villayne for terme of lyfe & ye villayn purchaseth lãdes i fee & he yt hath the villayn entreth / whether he may with cõsciẽce kepe ye lãdes to hi & to his heyres as he may by ye law the.xviii.cha.fo.45.
¶ The.xviii.questiõ of the Studẽt if a mã in the case next before enformne hym yt is in the reuercõ of the villayn that after ye dethe of the villayn he hath right to ye lãde & coũsayleth hi to entre / wherupõ great sute & charges folowe / what daũger yt is to hym that gaue the counsayle. The.xix. chapitre. Fo.47.
¶ The.xviii. question of the Student is vpõ a feffemẽt made vpõ cõdicõ that the feffe shall pay a rent to a straũger / how yt feffement shall wey in lawe & conscience. The.xx.chapitre. Fo.49.

¶ The.xix.question of the Studēt is vpō a feffement in fee / & it is agreed that the feffe shall pay a rente to a straunger/ howe that feffement shall way in law & conscience. The.xxi.chapitre. Fo.51.

¶ Howe vses in lande began & by what law & the cause why so moche lāde is put in vse. The.xxii.chapitre. Fo.54.

¶ The diuersite betwene two cases wher of one is put in the.xx.chapitre and the other in the.xxi.chapitre of this present boke. The.xxiii.chapitre. Fo.57.

¶ what is a nude cōtracte or a naked promyse after the lawes of Englande/ & whether any accion may lye thereupō. The.xxiiii.chapitre. Fo.61.

¶ The.xx. question of the Studēt if a mā that hath two sones one borne before espousels & the other after espousels by his wyll byqueteth to his sone & heyre all his goodes/ whiche of the sones shall haue ye goodes in conscience. The.xxv.cha. Fo.67

¶ whether an Abbot may with conscience present to an aduouson of a churche that belongeth to the howse without assent of the couēt. The.xxvi.chapitre. Fo.72.

¶ If a mā fynde beestes in his corne doig

hurt/whether he may by his owne autho
rite take them and kepe them tyll he be sa
tisfied for the hurt. The.xxvii.cha. Fo.75
¶whether a gyfte made by one vnder ye
age of.xxv.yere.be good. The.xxviii.
chapitre. Fo.76.
¶If a man be conuicte of heresye before
the ordinarie/whether his goodes be for-
fet. The.xxix.chapitre. Fo.78.
¶where diuers patrons be of an aduou-
son the churche voydeth/ the patrons va-
rye in theyr presentementes/whether the
Bisshop shall haue libertie to present whi
che of the incumbentes that he wyll.
The.xxx.chapitre. Fo.codem.
¶Howe long tyme the patron shall haue
to present to a benefice. The.xxxi.
chapitre. Fo.80.
¶If a man be excõmenged / whether he
may in any case be assoyled withoute ma-
kynge satisfaccion. The.xxxii.cha. Fo.83.
¶whether a prelate may refuse a legaci.
The.xxxiii.chapitre. Fo.84.
¶whether a gyfte made vnder a condicõ
be voyde if the souerayne onely breke the
condicion. The.xxxiiii.cha. Fo.87.
¶whether a couenaunt made vpon a gift

to the churche that it shall nat be aliened be good. The. xxxv. chapi. Fo. 89.
¶ If the patrō presente nat within. vi. monethes who shall present. The. xxxvi. chapitre. Fo. 91.
¶ whether the presentemente & collacion of all benefices and dignities voydyng at Rome belonge onely to the Pope. The. xxxvii. chapitre. Fo. 95.
¶ If a howse by chaunce fall vpō a horse that is borowed who shall bere the losse. The. xxxviii. chapitre. Fo. 97.
¶ If a preeste haue wonne moche money by sayinge masse / whether he maye gyue those goodes or make a wyll of them. The. xxxix. chapitre. Fo. 99.
¶ who shall succede to a clerke that dyeth intestate. The. xl. chapitre. Fo. 101.

☞ Addicion.

¶ If a man be outlawed of felonye / or be attaynted for murdre or felony / or that is an Aleulsmus may be slayne by euery strāger. The. xli. chapitre. Fo. 102.

☞ Addicion.

¶ whether a man shalbe bounde by the act or offece of his seruaunt or officer. The. xlii. chapitre. Fo. 104.

¶ Addicion.

¶ whether a villayn or a bondeman may gyue a waye his goodes. The. xliii. chapitre. Fo. 106.

¶ If a clerke be promoted to the title of his patrimony & after selleth his patrimony & falleth to pouerty / whether he shall haue his title therin. The. xliiii. chapitre. Folio. 108.

¶ Diuers questions take out by the Student of the summes called Summa roselia & Summa angelica whiche me thinketh are necessary to be sene how they stande & agree with the lawe of the realme. The. xlv. chapitre. Fo. 111.

¶ where ignorauncе of the lawe excuseth in the lawes of Englande & where nat. The. xlvi. chapitre. Fo. 115.

¶ Certayne cases & groundes where ignorauñce of the dede excuseth in the lawes of Englande & where nat. The. xlvii. chapitre. Fo. 119.

Tabula.
☞ Addicion.

¶ The fyrst question of the Doctour how the law of Englande may be sayde reasonable that prohibiteth. ꝛc. The .xlviii. chapitre. Fo.120.

¶ The seconde question of the Doctoure whether the warranty of the ionger brother that is take̅ as heyre bycause it is nat knowen but that the eldest brother is ded be in conscience a barre to the eldest brother as it is in the lawe. The. xlix. chapitre. Fo.124.

¶ The thyrde question of the Doctoure / whether if a mā procure a collaterall warranty to extincte a right that knoweth another man hath to lande be a barre in cō science as it is in the lawe. The.l. chapitre Fo.127.

¶ The fourth question of the Doctoure / is of wreke of the see. The.li.chapitre. Folio. 129.

¶ The fyft question of the Doctour / whether it stande with conscience to prohibite a Jurye of meate & drynke tyll they be agreed of theyr verdite. The.lii.chapitre. Folio. 131.

Tabula.

¶ The .vi. question of the Doctoure is / whether the colours that be gyuen at the comon lawe in assises / accions of trespas and diuers other accions stande with cõscience bycause they be moste comonly feyned and nat trewe. The.liii.chapitre. Folio. 132.

☞ Addicion.

¶ The.vii.questiõ of the Doctour/cõcerneth the pleadynge in assise whereby the tenementes vse somtyme to pleade i suche maner that they shall confesse no ouster. The.liiii.chapitre. Fo.137.

¶ The.viii.questiõ of the Doctour/ how the statute that was made in the.xlv. yere of kynge Edwarde the thyrde concernynge the tythe of woode may stande with conscience. The.lv.chapitree Folio. 140.

¶ Finis Tabule.

¶ Thus endeth the seconde Dialogue in Englisshe / with the Addicions bytwene a Doctour of of diuinitie and a Student in the lawes of Englãde which treateth of diuers thynges yᵗ be shortly touched in the fyrst lesse of thys present boke before the introduccion.

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¶ Imprynted,

at Lodõ in the Fletestrete / by me Robert Redman dwellynge in saint Dunstones parysshe / nexte the churche. In the yere of our lorde god. M.CCCCC. xxxii. The fyrst day of the moneth of July. ∴

R